(2)

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT of the UNITED STATES

BRUCE EDWARDS,
Petitioner-Appellant-Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Respondent-Appellee-Defendant.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI
APPENDIX (CONTINUED)

BRUCE EDWARDS
Petitioner, pro se
1001 Emporia Street
Aurora, Colorado 80010-3825
(303) 341-9433
(non-published, home)
2 of 2

APPENDIX (continued)
TABLE OF CONTENTS

#43 Motion (compel disclosures) 10/3/01 247
#44 Motion (enlarge disp. mtn. per.) 10/3/01.....251
#47 Motion (extend disp. resp. ddl.) 10/10/01.....253
#49 Order (deny enlarge (disp.) per.) 10/15/01....255
#51 Motion (strike #41 Ex. 2) 10/17/01.....256
#52 Motion (strike #41 Ex. 2/A) 10/17/01 259
#53 Motion (strike #41 Ex. 2/B) 10/17/01 264
#54 Motion (strike #41 Ex. 2/C-D) 10/17/01 270
#55 Motion (strike #41 Ex. 2/E-F) 10/17/01.....274
#56 Motion (enlarge disp. resp. ddl.) 10/17/01.....278
#59 Motion (strike #41 Ex. A) 10/22/01 279
#62 Motion (strike #41 Ex. B) 10/23/01 295
#69 Response (mtn. to compel) 10/30/01.....325
#76 Response (dispositive motion) 11/20/01 327
Encl. 1 BE1-11: L102 Note Pad {US15-25} 362
Encl. 2 BE12-15: EDUC Initial Discl. list.....364
Encl. 3 BE17-18 Request for Review blank 366
Encl. 4 BE19-20 L109 Debt Level {US71-2}....367
Encl. 5 BE21-2: Note, as received 6/6/01.....368
Encl. 6 BE23-42: Review of CSAC, 7/10/92....368
Encl. 7 BE43-65: Review of CSAC, 6/10/94....371
Encl. 8 BE66-77: Review of CSAC, 8/14/98....374
Encl. 9 BE78-81: NSLDS printouts {US86-9} 377
Encl. 10 BE82-3: L108 (audit) {US69-70} 380
Encl. 11 BE84: CSAC History {US14}.....381
Encl. 12 BE85: Edwards' 1999 diploma 382
Encl. 13 BE86-9: Rec. Disposition Sched. 382
Encl. 14 BE90-108: Review of TTCI, 9/12/00 .385
Encl. 15 BE109-20: Audit of TTCI, 6/13/00....387
Encl. 16 BE121: TTCI "attendance" {US8} 390
Encl. 17 BE122: TTCI production cover.....390
Encl. 18 BE123-4: L106 (letters) {US26-7}.....391
Encl. 19 BE125-56: 1995+ dunning samples .391
Encl. 20 BE157-68: pre-1996 samples.....394
Encl. 21 BE169: R111 (referrals) {US83} 396

#83 Objections (to trial exhibits) 1/25/02 397
#91 Objections (to counsel's misleading) 4/5/02 .. 408
#99 Administrative Record (AR) 5/15/02 410
5/9/02 Certification 410
Index 411
#1-2 (see 8/31/00 DCS reply, p. 182 supra) 411
#3-4 (see promissory note, p. 133 supra) 411
#5 5/9/02 (R107) GSL Program Specific 412
#6-11 5/9/02 (L106) Letter History 413
#12-21 5/9/02 (L102) Collector Note Pad 418
#22 5/9/02 (R109) Account Profile 428
#104 Objections (to #99 AR) 6/7/02 429
#105 Supplement (to #99 AR) 6/7/02 436
INDEX to #105 ("SAR") 436
SAR 51-3: 1/28/97 History letter 445
SAR 100-2: 3/29/00 Colo. Admonition 447
SAR 104: 6/1/00 Admon'n Withdrawal 451
SAR 153: 12/31/92 CSAC Contact Hist 452
SAR 170: 1/23/01 (L109) Debt Level Info. 456
SAR 179: "R107" explanatory sheet 457
SAR 183: 1/23/01 (I100) Fed. Offset Info. 458
SAR 379-80: Request For Review form 459
SAR 391-6: "L109" explanatory pages 462
SAR 415: "I100" explanatory pages 464
#107 Objections (to Supp.) 6/21/02 468
#108 Opening Brief 7/21/02 470
#109 Response (cf. #41 Brief) 8/30/02 508
#110 Reply Brief 9/17/02 517
Treasury Offset Program (TOP) information 526
Overview 526
TOP Law (pertinent components) 527

#43 Motion (compel disclosures) 10/3/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT-3 2001 James R. Manspeaker Clerk s/KS}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Motion for Production of Complete and Legible Documents Presented as Defendant's Rule 26(A[Sic])(1)(B)A & B Exhibits

Plaintiff pro se Bruce Edwards hereby moves to compel disclosure of the documents identified in paragraphs 6-9 herein, pursuant to Rule 37 of Federal Rules of Civil Procedure (FRCP), by this Motion for Production of Complete and Legible Documents Presented as Defendant's Rule 26(a)(1)(B)A & B Exhibits, for the reasons described below.

1. On June 29, 2001, Plaintiff filed a Motion and Brief to Extend Leave to Amend the Complaint with three enclosures. Enclosure 2 was comprised of the Originals of 14 Defendant Initial Disclosures—13 items from school, TTCI and 1 item from state guarantor, CSAC; these were consecutively numbered by Defendant as US000001-14 on their faces. Plaintiff's brief, particularly in the last paragraph on page 8 and all of page 9, noted the inadequacies of those originals as disclosed by Defendant, described the difficulty in working with them, and sought direction to obtain production of documents supporting Defendant's claim against Plaintiff in reasonable condition and completeness, so that Plaintiff could adequately address Defendant's foundation for the actions resulting in Plaintiff's cause of action when amending the Complaint.

2. For comparison of legibility with the original US000003 of Enclosure 2 referenced immediately above,

Plaintiff supplied the original of the first legible copy of the second page of the promissory note that Plaintiff ever received from Defendant, as the third page of Plaintiff's Enclosure 1 with the 6/29/01 Brief and Motion to Extend Leave to Amend Complaint.

3. On July 27, 2001, Plaintiff served Defendant the enclosed Requests for Documents and Complete/Legible Initial Disclosure; on its first of seven pages, this request identifies, by Defendant's assigned number on each paper, as incomplete or illegible "Defendant U.S.Department of Education's Initial Disclosures" §(a)(1)(B)A Exhibits 1 through 7 inclusive (except for Exhibit 2, which had recently been supplied to Plaintiff in reasonably legible format).

4. On August 27, 2001, Defense counsel Peter J. Krumholz initiated telephone contact with Plaintiff to seek a revision of Plaintiffs second set of interrogatories under FRCP 33, at which time the parties agreed to an extension until 9/4/01 for response to such amended interrogatories; the parties subsequently teleconferenced and agreed to an extension until 9/7/01 for response to the amended interrogatories that would include the outstanding production of documents for Plaintiffs 7/27/01 request. During that subsequent teleconference, the Request for Complete/Legible Initial Disclosures was identified and agreed by both parties as included in the 9/7/01 extension.

5. Defendant's 9/7/01 Responses to Plaintiff's Interrogatories and Requests for Production of Documents/ Answers to Requests for Production of Documents (copy enclosed), did not address in any manner the first page REQUEST FOR COMPLETE/LEGIBLE INITIAL DISCLOSURE of Plaintiff's Requests for Documents and Complete/Legible Initial Disclosure.

6. Defendant's Rule 26(a)(1)(B)A Exhibit 1: "Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount $2,500.00 to attend the Travel and Trade Career Institute (TTCI)" original was filed with the Court as described in 1 above (Enclosure 2, US000001). Because the bottom is cut off, the back side is

missing and CSAC's facsimile stamp across the top makes it appear to have been mislabeled as a document from TTCI, this is a failure to disclose under FRCP 37(a)(3) substantial information related to Defendant's activities (for the "EDUC claim") that resulted in Plaintiffs cause of action in the matter before this Court.

7. Defendant's Rule 26(a)(1)(B)A Exhibits 3-5: "Receipt[s] for Pell Grant Check[s] from TTCI in the amount of [3] $975.0[sic] signed on August 14, 1985; [4] $656.00 signed on October 3, 1985; [5] $319.00 signed on October 3, 1985" originals were filed with the Court as described in 1 above (Enclosure 2, US000004-6). These receipts are illegible as to the identity of the bank on which they are drawn; they are also incomplete with respect to establishing authenticity, genuineness and relevance to the EDUC claim for such check receipts from TTCI demonstrating its acceptance of a grant purportedly made to Plaintiff after the first day of class that he identified, more than once since 1998 without dispute from Defendant, as the date he withdrew from enrollment without further contact with the school. These receipts are, therefore, incomplete and a failure to disclosure under Rule 37(a)(3).

8. Defendant's Rule 26(a)(1)(B)A Exhibit 6: "TTCI Student Enrollment Agreement signed on May 7, 1985" original was filed with the Court as described in 1 above (Enclosure 2, US000007). Because this document is almost entirely illegible, and appears to reference a reverse side for additional terms of contract that was not disclosed, this document is incomplete and a failure to disclose under FRCP 37(a)(3).

9. Defendant's Rule 26(a)(1)(B)B Exhibit 1: "Contact History Report dated December 31, 1992" original was filed with the Court as described in 1 above (Enclosure 2, US000014). This document is not only difficult to read and was not presented in a format understandable to Plaintiff by provision of a key or description of the information contained on it, but also Defendant has advised Plaintiff it is not a very clear copy and is not a

document that Defendant is familiar with and, therefore, Defendant cannot definitively determine if there are any notations showing Plaintiff's receipt of or response to mailing or telephone call, nor answer to what the "bad address" descriptions on it pertain to; this is a failure to disclose under FRCP 37(a)(3).

Having made good-faith attempts to address this issue with Defendant, and without intending to limit addressing such other materials produced in the disclosure and discovery phase of the matter before this Court should permission be required and given to address them at a later date, Plaintiff requests this Court to order Defendant's full-sized, legible, complete disclosure of all pages of the items identified in paragraphs 6 through 9 above, including such supporting documents as reasonably necessary to understand their contents or as should, in fairness to Plaintiff, be produced to demonstrate them as relevant, genuine and timely for the purpose of supporting the EDUC claim or addressing Plaintiff's Complaint for which they were introduced as exhibits in the listing of Defendant's Rule 26(a) disclosures.

s/*Bruce Edwards* — *10.1.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)
* * *[enclosures identified in text above]

#44 Motion (enlarge disp. mtn. per.) 10/3/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

(Filed United States District Court Denver, Colorado BB
OCT-3 2001 James R. Manspeaker Clerk s/KS)

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

MOTION FOR ENLARGEMENT OF PERIOD FOR DISPOSITIVE MOTIONS

Comes here now, Plaintiff pro se Bruce Edwards seeking an extension of the Scheduling Order #7c, Dispositive Motion Deadline of October 1, 2001, filed by this Court on May 18, 2001 for Civil Action #0l-BB-36 for the reasons stated herein.

1. As a pro se litigant, Plaintiff has focused the majority of his resources on producing a proper Amended Complaint to ensure its relevance and earliest production in this matter.

2. As a displaced employee at DIA, Plaintiff has recently had to engage in involuntary work search activities to the detriment of time available to him to devote to this matter.

3. Although the Certificate of Service accompanying it was inadvertently mis-dated by having been pre-printed as 9/10/01, but Plaintiff s Objections to Sufficiency of Defendant's Answer to Plaintiffs Requests for Admissions #1, 3, 4, 7, 8, 14, 20, 24 and 35 was signed on 9/12/01, Plaintiff has received no acknowledgment or response from Defendant.

4. While Plaintiff received responses to his second set of interrogatories (#34-50) and responses to, but not actual documents for, his requests for production of documents after mutual agreement of the parties to extend the deadline for requests to September 7, Plaintiff

is still in process of assessing Defendant's responses, for conference related primarily to questions of sufficiency in order to avoid the need for related motions to this Court, such as resulted in the accompanying Motion for Production of Complete and Legible Documents Presented as Defendant's Rule 26(a)(1)(B)A & B Exhibits.

5. Of the actual production of documents where Defendant did not claim, for instance, a lack of possession, custody or control, Requests #2 ,8, 13, 15, 17-22, and 24e-k were posted on 9/18/01, and are an inches-thick stack that Plaintiff has not finished reviewing for content in order to address any issues with Defendant to avoid need for related motions for production. As an example of why this is necessary, please see #24(f) in each of the enclosed:

- Requests for Documents and Complete/Legible Initial Disclosure,
- Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents/Answers to Requests for Production of Documents, and
- Production for Request No. 24(f), which is enclosed in its entirety (cover plus 1 page)

Plaintiff continues to work diligently on the discovery process, but finds the quantity and quality of Defendant's responses require more time for adequate communication and completion than by deadlines previously set by the Court, and respectfully requests an extension of the deadline for dispositive motions contingent upon completion of the discovery process, but at least similar to the three months provided for Final Trial Preperation Conference and Trial dates., reset by motion of this Court filed September 14, and amended September 24, 2001.

s/*Bruce Edwards* — *10.1.01*
Bruce Edwards, — Date
Plaintiff *pro se*
(303) 341-9433 (non-published, home)
* * *[bulleted enclosures listed above]

#47 Motion (extend disp. resp. ddl.) 10/10/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado *BB*
OCT 10 2001 James R. Manspeaker Clerk s/*DB*}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

PLAINTIFF'S MOTION FOR APPLICATION OF D.C.COLO.LR 7.1, OR IN THE ALTERNATIVE, FOR APPLICATION OF FED.R.CIV.P. 12(C)

Upon October 2, 2001, Minute Order entered by Magistrate Judge Boyd N. Boland in this matter, Plaintiff, pro se, hereby requests application of D.C.COLO.LR 7.1, "[a]n opposing brief shall be filed within twenty days after service of the motion or such additional time as the court may set...," which does not require setting a lesser amount of time for such response to a motion filed under Fed.R.Civ.P. 56; Defendant's subject Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1), its related brief, attached declarations and exhibits ("the Motion"), although not captioned as such, is in its first alternative a motion filed under Rule 56 Summary Judgment.

In the alternative, Plaintiff, pro se, hereby requests application of the same Local Rule cited above, under Fed.R.Civ.P. 12(c), "[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56...," based on the Motion's introduction of the matter of student grant disbursals, alleged to have been received by Plaintiff s signature in 1985, from the same school as originated the subject loan request for Plaintiff; the school's generation of a grant purportedly received by

Plaintiff's signature in 1985 is outside the original pleadings on Defendant's actions related to Plaintiffs disputed, undocumented receipt according to a promissory note for an advance, allegedly accepted by that school on Plaintiff's behalf on June 21, 1985, for which Defendant asserts a right to collect against Plaintiff on the basis that valid payment against the Federal guarantee for the loan request was made to a lender.

s/*Bruce Edwards* — *10.8.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#49 Order (deny enlarge (disp.) per.) 10/15/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
MAY 15 2002 PM 1:37 James R. Manspeaker Clerk s/JU}

Civil Number: 01-BB-0036
BRUCE EDWARDS,
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant

ORDER

This matter is before me on the following motions by the plaintiff:

(1) **Motion for Enlargement of Period for Dispositive Motions** (the "Motion for Enlargement"), filed October 3, 2001; and

(2) **Motion for Leave to Amend Complaint** (the "Motion to Amend"), filed October 4, 2001.

Neither motion contains a certificate of compliance with local rule of practice 7.1A, D.C.COLO.LR, which requires:

> The court will not consider any motion, other than a motion under Fed. R. Civ. P. 12 or 56, unless counsel for the moving party, before filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel to resolve the disputed matter. Counsel for the moving party [or the moving party if proceeding pro se] shall file a certificate describing specifically the efforts to comply with this rule.

Accordingly, IT IS ORDERED that the Motion for Enlargement and the Motion to Amend are DENIED for failure to comply with Rule 7.1A.

Dated October 12, 2001. BY THE COURT:

s/*Boyd N. Boland*
United States Magistrate Judge

#51 Motion (strike #41 Ex. 2) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

PLAINTIFF'S MOTION TO STRIKE EXHIBIT 2 OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(B[SIC])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion * * * Exhibit 2 attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * RULE:	GROUNDS to Strike EXHIBIT 2: Declaration of Glenda Rasca
FRCP# 37(c)(1)	Defendant did not disclose identify[sic] of Ms. Rasca under Rule 26(a) or 26(e)(1) and, thus, Declaration should be excluded * * *
FRCP# 56(e)	* * * not made on personal knowledge, does not set forth facts admissible in evidence, fails to show competence in matters stated.
FRCP# 56(g)	Introduction of issues related to school performance/"records" and the inclusion of allegations about which Ms. Rasca could not possibly have personal knowledge is unrelated to dispute of lender performance * * *
FRE# 104(a)	* * * on the basis of stated experience at that school since 1998 and, therefore, cannot competently attest in those areas with respect to 1985 issues in general or PlaintIffs experience in particular.

* * * RULE:	GROUNDS to Strike EXHIBIT 2: Declaration of Glenda Rasca
FRE# 402	* * * based on incomplete/uncertified "records" from 1985 without personal knowledge of the events and without addressing the disputed consummation of the 6/17/85 Note agreement with First Independent Trust * * * which prior to the Consolidated Omnibus Budge Reconciliation Act of 1985 (* * * effective for loan disbursements on or after January 1, 1986) did not require loan checks to be sent to schools nor provide for the school's endorsement of checks without students knowledge/consent on the basis of documenting attendance for part of the loan period--are not germane to establishing the existence an alleged obligation to Bank of America * * *, nor were Ms. Rasca's statements under consideration in Defendant's 3rd quarter, 2000, final agency action* * * and, therefore are irrelevant and and[sic] not admissible.
FRE# 403	* * * attestations about the incomplete/indecipherable enrollment contract, uncertified and self-contradictory documents/records first produced in 2001 * * * not relevant to existence of a debt to Bank of America on Plaintiff's part alleged by Defendant, nor was it part of Defendant's 3rd quarter, 2000, action* * * therefore lends confusion of the issues and is misleading.
FRE# 602	* * * not supported by evidence of, nor does it of itself indicate, Ms. Rasca's personal know ledge of Plaintiff's 1985 experience at TTCI.

* * * RULE:	GROUNDS to Strike EXHIBIT 2: Declaration of Glenda Rasca
FRE# 613	* * * as relevant * * * to the EDUC claim or to Defendant's 3rd quarter, 2000, action * * * is contradicted by Defendant's Answer (9/4/01) to Plaintiff's Requests for Admissions (7/27/01) #7 set forth here * * *: Admission 7: Prior to Plaintiff's original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him. Answer: Admit that. prior to this suit. Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant.
FRE# 106	* * * on the basis of 9 papers that do not comprise the official institution records required under applicable programs, see 34 CFR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(1), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)*iii).
FRE# 901(b) (2)	* * * includes assertions of Plaintiff's signing documents in implied identification/ authentication of the genuineness of those signatures without familiarity not acquired for the purposes of this suit.
FRE# 901(a)	Defendant/Ms. Rasca have not offered evidence sufficient to support a finding of admissibility based on authentication * * *

Respectfully submitted,

s/*Bruce Edwards* *10.15.01*

Bruce Edwards, Plaintiff, pro se Date

1001 Emporia Street, Aurora, CO 80010-3825

(303) 341-9433 (non-published, home)

#52 Motion (strike #41 Ex. 2/A) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Plaintiff's Motion to Strike Exhibit 2/A of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B[sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibit 2/A attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
FRE# 104(a)	* * * an almost entirely illegible copy of the front side * * * at its bottom, "NOTICE: See reverse side for additional terms of contract." * * * Plaintiff's agreement with the school cannot be ascertained. Thus, Exhibit 2/A is irrelevant.
FRE# 106	* * * incomplete/illegible papers do not comprise the entire official institution records required under applicable programs, see 34 CFR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(1), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) that ought in fairness be considered contemporaneously with Exhibit 2/A.

* * * RULE:	GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"
FRE# 901 (b)(1)	* * * introduction of Exhibit 2/A is not made by one shown to possess the knowledge to authenticate it.
FRE# 402	The Motion's supporting Brief states, at pp. 16-17, "[t]he structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school, and the borrower's obligation under the loan programs and the borrower's repayment obligation under the loan contract...the borrower's loan contract with the lender and the enrollment contract with the school are two separate transactions;" so Exhibit 2/A is not relevant to existence of a debt to Bank of America * * *, nor was it obtained by Defendant prior to 3rd quarter, 2000, action * * * is thus not admissible as irrelevant.
FRE# 403	* * * adds confusion of the issues and is misleading.
FRE# 602	* * * Glenda Rasca does not show experience at TTCI earlier than February, 1998; * * * does not connote knowledge of the illegible/missing terms and subsequent amendment or handling of that particular 1985 document.
FRE# 901(a)	* * * does not meet school record retention requirements under 34 CFR 668.24(d)(3)(ii)-(iii), of reproduction of accurate, legible, and complete copies, sized like originals, for documents, and of original, hard-copy maintenance of any document containing a signature required to validate the authenticity of its information; * * * so is not admissible.
FRE# 613	Defendant establishes the separation of enrollment versus loan contract liabilities * * * (quoted under FRE#402 objection herein). This is extrinsic evidence of inconsistent admissions of party-opponent/Defendant now asserting

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
	Exhibit 2/A is "evidence."
FRE# 901 (b)(2)	Ms. Rasca (Exhibit 2 author) does not profess to have known Plaintiff or to have worked at TTCI in May of 1985, and so is not qualified to offer the non expert opinion, based upon familiarity not acquired for purposes of the litigation, "[o]n May 7,1985, Mr. Edwards signed..." implying knowledge/identification of the handwriting on Exhibit 2/ A as genuine. (Note: this is not a denial of limited participation including enrolling at TTCI, but is an objection to representations made by Ms. Rasca.)
FRE# 901(b) (8)(A)	Without authenticating documentation or provenance accompanying Defendant's 2001 introduction to Plaintiff of documents from TTCI that were not disclosed to Plaintiff prior to his filing suit in this matter, Exhibit 2/A is an illegible/incomplete representation of the entire relevant student record * * *, and is not presented in such condition as to create no suspicion concerning its authenticity.
FRE# 901(b) (8)(B)	* * * as revealed by Defendant's 9/7/01 Answers to Requests for Production of Documents (7/27/01) for Request No. 11 set forth here: "Request No. 11: All extant school documents, records or reports in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access--but may not necessarily have queried the existence or required the production to date--so that the information, authorization or records they contain may be assessed for relevance to establishing the facts of Plaintiff's involvement with the school, the legitimacy of the alleged disbursement, and/or the existence of the alleged debt and the validity of Defendant's claim against Plaintiff.

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
	Response: *See* US0004-13. Defendant is not in possession. custody or control of any other documents that would satisfy this request;" Exhibit 2/ A is not authenticated by evidence that it was in a place where, if authentic, it would likely be.
FRE# 1001(3) FRE# 1001 (4) FRE# 1002 FRE# 1003	Exhibit 2/A is not an original/output readable by sight, shown to reflect the data accurately; not a duplicate/reproduction that accurately reproduces the original; not presented as excepted by Rules of Evidence/Act of Congress from requirement of original to prove the content of a writing/recording (particularly upon the representation that it is a part of the school's record related to Plaintiff, when its appearance violates 34 CPR 668.24(d)(3)(ii)-(iii); not admissible as a duplicate equal to an original because Plaintiff has raised a genuine question as to amendment of the original which may have been recorded on the back side so that it would be unfair to admit Exhibit 2/ A in lieu of the original
FRE# 1007	Plaintiff's acknowledgment of participating in the enrollment process at TTCI included his statements showing later amendment/cancellation of that enrollment contract, upon his fulfilling a requirement to submit his withdrawal in writing; since such cancellation may have been recorded on the back side * * *, failure to produce a complete and legible original is not accounted for by Plaintiff's admission.
FRCP# 56(e)	* * * production solely for [agency's] own defense in this suit; fails to show affirmatively that Ms. Rasca is competent to testify to all the matters stated in Exhibit 2 relative to Exhibit 2/A--which is not a sworn or certified copy * * * [see 34 CPR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(l),

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
	(d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) * * * institution record requirements related to a student in the applicable program].
FRE# 401	* * * Applicable terms of the Note/contemporary regulations and Defendant's statements establish the limited school materials introduced/disclosed as being irrelevant to supporting Defendant's claim that Bank of America was the originating lender of an advance to Plaintiff in 1985, or reviewing Defendant's related third quarter, 2002[sic], action/decision.

Respectfully submitted,

s/*Bruce Edwards* — *10.15.01*

Bruce Edwards, — Date

Plaintiff, pro se

1001 Emporia Street,

Aurora, CO 80010-3825

(303) 341-9433 (non-published, home)

#53 Motion (strike #41 Ex. 2/B) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Plaintiff's Motion to Strike Exhibit 2/B of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B[sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibit 2/B attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * RULE:	GROUNDS to Strike EXHIBIT 2/B:
FRE# 104(a)	* * * introduced in the Exhibit 2 Declaration of Glenda Rasca: "[p]rior to August 1985, TTCI received $2,459.58 from student loans for payment of Mr. Edward's tuition and fees. Exhibit B," but since the origin/authenticity of this exhibit has not been established, and since it does not indicate from whom or how TTCI received said "student loans," it is irrelevant.
FRE# 106	*[Note: Exhibit 2/B is initial disclosure's US000004]* Because Defendant's (9/7/01) Answers to Requests * * * for Production of Documents * * *: "Request No.2: A complete and legible copy of all contents of the Pell Grant

*** RULE:	GROUNDS to Strike EXHIBIT 2/B:
	application, including any separate instructions contemporaneously supplied to guide the completion of this application, with Plaintiff s 1985 signature requesting the funds that appear in the Pell Grant check receipts Defendant submitted to Plaintiff with Initial Disclosure (US000004-6). Response: Defendant is not in possession, custody or control of any such document. Defendant will produce under separate cover, however, the Records Disposition Schedules. Revised as of December 1998. with regard to how long the Department of Education is required to maintain Pell Giant Program Records;" Exhibit 2/B cannot be compared to its application, which ought in fairness be contemporaneously considered.
FRE# 401	* * * is the same initial disclosure document "US000004," for Defendant's Answer (9/4/01) to Plaintiff's Requests for Admissions (7/27/01) set forth here: "Admission 15: The Pell Grant Check receipt copies (US000004-6) provided to Plaintiff no earlier than Defendant's Initial Disclosures in this matter, do not show anywhere on their faces the exact amount of the proposed loan on the promissory note as student financial funds previously received bythe school. Answer: Admit," and "Admission 18: Defendant did not offer Plaintiff copies of US000004-6 for verification of his signature at any time prior to Initial Disclosures in this matter, despite Defendant's experience with Plaintiff's non-payment and disputes of the existence of the alleged debts since Defendant accepted assignment of the claim in 1993. Answer: Admit; Defendant did not obtain copies of US000004-6 until February 2. 2001;" the authenticity of the checks has not been

* * * RULE:	GROUNDS to Strike EXHIBIT 2/B:
	established through acknowledgment or documents of provenance, and Defendant did not examine them prior to 2/2/01, so Exhibit 2/B is irrelevant * * *
FRE# 402	Based on lack of relevance described in the FRE#401 objection herein * * * is not admissible
FRE# 602	* * * introduced (see p. 2 #5 of Exhibit 2 Declaration of Glenda Rasca* * *) under a lack of personal knowledge as to its origin and without introduction of evidence to support a finding that Ms. Rasca has personal knowledge of its history or authenticity.
FRE# 901 (b)(4)	It has not been established that Plaintiff's signature is consistent and unique enough to be authenticated/identified sixteen years after his name is written by any particular distinctive characteristics that would preclude the school's having signed his name without his consent, which he filed statement with Defendant as a belief with his 1997 request for review of the claim against him, years prior to Defendant's 2001 production of Exhibit 2/B * * *
FRE# 613	* * * Defendant's Answer (9/4/01) to Plaintiff's Requests for Admissions (7/27/01) set forth here: "Admission 20: Defendant did not advise Plaintiff of any investigation based on his dispute to having received the alleged loan, or make any inquiry of Plaintiff regarding details of his involvement with TTCI outside offering to accept Plaintiff's application to discharge an existing loan in response to his 1997 request for review. Answer: Object to this admission as including multiple statements. Subject to and without waiving this objection, deny first statement regarding investigation because there was no investigation; admit that Plaintiff offered the details of his involvement with

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/B:**
	TTCI, prompting Defendant's staff to send him the discharge applications and negating the need for further inquiry;" if investigation and further inquiry were deemed unnecessary to the determinations of the existence of debt and final agency action/decision, on Plaintiff's dispute, they should not be introduced on Defendant's.
FRE# 901(a)	* * * there is insufficient evidence to support a finding of authenticity and that Exhibit 2/B is what Defendant claims.
FRE# 901 (b)(1)	* * * the person under whose declaration Exhibit 2/B was introduced * * * is one who, by distance in time from relevant events, cannot authenticate or identify it based on personal knowledge.
FRE# 901 (b)(2)	Ms. Rasca, * * * can not know as a fact that "Plaintiff signed. . ." as to the authenticity of handwriting based upon familiarity that was not acquired for this suit.
FRE# 901(b) (8)(A)	Lacking authenticating documentation, not disclosed in response to Plaintiffs notice he believed the school signed his name (fIled in 1997), without provenance accompanying 2001 introduction of "documents" * * * is not authenticated/identified by evidence it is in such condition as to create no suspicion concerning its authenticity.
FRE# 901 (b)(7)	Department of Education Records Disposition Schedules (ED/RDS) dated 10/99, produced in reference to Defendant's Admission set forth herein under FRE#106 objection, includes: "**Pell Grant Program Records.** * * * "a. Student Records. * * *./ED/RDS, Part 10, Item 17a (N1-441-92-1, Item la) "b. Institution Records. * * * **Disposition**: Transfer to a Federal Records Center after final payment to grantee. Destroy 15 years after final payment or audit, whichever

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/B:**
	is sooner./ED/RDS, Part 10, Item 17b (N1-441-92-1, Item Ib)." Exhibit 2/B is, therefor, not authenticated or identified as having come from a writing, in any form, authorized by law to be recorded or filed as from the public office where items of this nature are kept.
FRE# 901(b)(8)(B)	See Federal Rules of Evidence #901(b)(8)(A) objection herein; Exhibit 2/B is not evidenced as in a place where, if authentic, it would likely be.
FRE# 902(4)	* * * not certified as a correct copy of public records * * * by the custodian/authorized by law and recorded/filed in a public office, so is not self authenticating.
FRE# 902(8)	Plaintiff does not acknowledge Exhibit 2/B; it is not/cannot be a notarized acknowledged document, so is not self authenticating as such.
* * *	* * *
FRE# 902(11)	* * *is not self-authenticating as a certified domestic record of regularly conducted activity: (A) made at or near the time of the occurrence of the matters set forth by information from a person with knowledge of those matters at TTCI in 1985, (B) kept in the course of the regularly conducted activity * * *; and (C) through regularly conducted activity as a regular practice: automatic grant processing as part of loan origination was not instituted until Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99- 272, 4/7/86, § 16032(b)] required determination of eligibility for a Pell Grant prior to loan approval for periods of enrollment on or after 1/1/86, and TTCI's marking the subject loan application (Motion Exhibit A) "#29(A) FINANCIAL AID FOR LOAN PERIOD: -0-" to indicate it was unaware Plaintiff would be awarded such grant is the sole/contradictory record related to Exhibit 2/B .

* * * RULE:	GROUNDS to Strike EXHIBIT 2/B:
FRCP# 37(c)(1)	Defendant was not substantially justified in failing to disclose, under FRCP 26(e)(1), the information that Exhibit2/B would be offered into evidence/by a declaration sworn under penalty of perjury under the laws of the United States of America stating "Plaintiff signed" the "receipted by" name written on Exhibit 2/B, so should not be permitted.
FRCP# 56(e)	Exhibit 2/B is not a sworn or certified copy * * *
FRCP# 56(g)	The Exhibit 2 declarations related to Exhibit 2/B were made in bad faith.

Respectfully submitted,

s/*Bruce Edwards* *10.15.01*

Bruce Edwards, Date

Plaintiff, pro se

1001 Emporia Street,

Aurora, CO 80010-3825

(303) 341-9433 (non-published, home)

#54 Motion (strike #41 Ex. 2/C-D) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Plaintiff's Motion to Strike Exhibits 2/C-D of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B[Sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibits 2/C-D attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * **RULE:**	**GROUNDS to Strike EXHIBIT 2/C-D:**
FRE# 104(a)	*introduced in the Exhibit 2 Declaration of Glenda Rasca under assertions that, on October 3, 1985, Mr. Edwards signed for Pell Grant checks, but Ms. Rasca does not profess to have known Plaintiff or worked at TTCI on October 3, 1985. Since the declaration related to these exhibits is not authenticating evidence, and since neither it nor Exhibits 2/C-D indicate/ establish the origin of TTCI's receipt of money recorded by them, they are irrelevant.
FRE# 106	*[Note: Exhibits 2/C-D are initial disclosure's US000005-6 respectively]* * * *[see same Rule in motion to strike Exhibit 2/B]*

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/C-D:**
FRE# 401	Exhibits 2/C-D are the same initial disclosure documents "US000005- 6," * * *[*see same Rule in motion to strike Exhibit 2/B*]
FRE# 402	Based on lack of relevance * * * they not admissible
FRE# 602	* * * introduced * * * under a lack of personal knowledge as to their origin and without introduction of evidence to support a finding that Ms. Rasca has personal knowledge of their history or authenticity.
FRE# 901 (b)(4)	It has not been established that Plaintiff's signature is consistent and unique enough to be authenticated/identified (16 years after his name is written) by any particular distinctive characteristics that would preclude the school's having signed his name without his consent, which he filed statement with Defendant as a belief in his 1997 request for review of the claim against him, years prior to 2001 production of Exhibits 2/C-D.
FRE# 901 (b)(1)	* * * the person under whose declaration Exhibits 2/C-D were introduced as evidence is one who, by distance in time from relevant events, cannot authenticate or identify it based on personal knowledge.
FRE# 613	Both subject exhibits contain the following on their faces: "MUST HAVE COMPLETED 18 UNITS FOR THIS CHECK, UNITS COMPLETED 0.00, AS OF 0/0, UNITS VERIFIED BY ..***am*** [commas added for clarity]," showing the contemporaneous record on this financial instrument/source document of the number of units completed/verified at its issuance does not meet the minimum requirement established/recorded on it; so there is no knowing if similar violations/liberties were recorded with the remainder of data on its face. * * * (see quote of admissions during discovery

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/C-D:**
	in this suit at FRE#613 objection in motion to strike Exhibit 2/B). * * *
FRE# 901(a)	* * * there is insufficient evidence to support a finding of authenticity and that Exhibits 2/C-D are what Defendant claims.
FRCP# 56(e)	* * *not a sworn or certified copy thereof * * *
FRE# 901 (b)(2)	Ms. Rasca, under whose declaration Exhibits 2/C-D were introduced * * * can not know as a fact that "Plaintiff signed.. ." as to the authenticity of handwriting based upon familiarity that was not acquired for this suit.
FRE# 901(b) (8)(A)	Lacking authenticating documentation, not disclosed in response to Plaintiff's notice he believed the school signed his name (fIled in 1997), without provenance accompanying 2001 introduction of "documents" * * * Exhibits 2/C-D are not authenticated/identified by evidence they are in such condition as to create no suspicion concerning their authenticity.
FRE# 901 (b)(7)	* * *[*see same Rule in motion to strike Exhibit 2/B*] Exhibits 2/C-D are, therefor, not authenticated or identified as having come from a writing, in any form, authorized by law to be recorded or fo;ed as from the public office where items of this nature are kept.
FRE# 901(b) (8)(B)	* * * not evidenced as from a place where, if authentic, they would likely be.
FRE# 902(4)	* * * not certified as a correct copy of public records * * * by the custodian/authorized by law and recorded/filed in a public office, so are not self authenticating.
FRE# 902(8)	Plaintiff does not acknowledge Exhibits 2/C-D; they are not/cannot be notarized acknowledged documents/are not self authenticating as such.

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/C-D:**
FRCP# 56(g)	* * * related declarations in Exhibit 2 were made in bad faith.
* * *	* * *
FRE# 902(11)	* * *[*see same Rule in motion to strike Exhibit 2/B*]
FRCP# 37(c)(1)	Defendant was not substantially justified in failing to disclose, under FRCP26(e)(1), the information that Exhibits 2/C-D would be offered into evidence/by declaration, sworn under penalty of perjury under Federal laws, stating "Plaintiff signed for" Exhibits 2/C-D (see Exhibit 2, p. 2 ##6-7), so should not be permitted.

Respectfully submitted,

s/*Bruce Edwards* — *10.15.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#55 Motion (strike #41 Ex. 2/E-F) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado
OCT 17 2001 James R. Manspeaker Clerk ___}

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

Plaintiff's Motion to Strike Exhibit 2/E-F of Defendant's Motion for Summary Judgment or, in the Alternative, Motionto Dismiss Pursuant to Fed.R.Civ.P. 12(B[Sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion for Summary Judgment or, in the Alternative, Motionto Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibits 2/E-F attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * **RULE:**	**GROUNDS to Strike EXHIBIT 2/E-F:**
FRE# 104(a)	* * * contradict other exhibits also introduced by Exhibit 2 (see FRE#901(a) herein), and Defendant did not receive them (see FRE#401 at Admission 7) prior to * * * Plaintiffs cause of action * * *, so Exhibits 2/E-F are irrelevant.
FRE# 106	* * * the entire official institution records required under applicable programs, see 34 CFR 668.24(c)(1)(i)- (vii), (c)(2)(iii), (d)(1), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) that ought in fairness be considered contemporaneously with Exhibits 2/E-F, is unavailable, according to Defendant (see Request and Response #11 at FRE#901(b)(8)(B) herein).
FRE# 901	* * * introduction of Exhibits 2/E-F is not made by one shown to possess the knowledge to

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
(b)(1)	authenticate them.
FRE# 403	* * * add confusion of the issues and are misleading.
FRE# 402	The Motion's supporting Brief states, at pp. 16-17, "[t]he structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school, and the borrower's obligation under the loan programs and the borrower's repayment obligation under the loan contract. . . the borrower's loan contract with the lender and the enrollment contract with the school are two separate transacti°ns." Thus, a transfer of liability from the school to the lender is not established by Exhibits 2/E-F and they are thus irrelevant/inadmissible.
FRE# 602	The Exhibit 2 declaration of Glenda Rasca does not show her experience at TTCI began earlier than February, 1998. This does not connote knowledge of events connected to the production (before 1998?) of Exhibit 2/E-F printouts, and Ms. Rasca lack of personal knowledge of 1985 events at TTCI does not provide for her declarations about them.
FRE# 901(a)	Because Exhibits 2/E-F contain such self-contradictions as "Agency Sales" score date (Exhibit 2/E) on an "ANC, Absent No Call" date (Exhibit 2/F), and Exhibit 2/F also records "ANC, Absent No Call" on 10/3/85, in contradiction of Exhibits 2/C-D, none of these exhibits authenticates the other, and they are not established to be what Defendant claims-records related to Plaintiff.
FRE# 613	Defendant * * * did not have school documents at the time of final agency action/decision prior to this suit * * *. This is extrinsic evidence of

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
	inconsistent admissions of party-opponent now asserting Exhibits 2/E-F are "evidence."
FRE# 901(b) (8)(A)	Without authenticating documentation or provenance accompanying Defendant's 2001 introduction to Plaintiff of documents from TTCI (that were not disclosed to Plaintiff prior to his filing suit in this matter, despite volunteered declarations related to attendance). Exhibits 2/E-F were not timely obtained and have not been presented in such condition as to create no suspicion concerning their authenticity.
FRE# 901(b) (8)(B)	* * * Defendant's 9/7/01 Answers to Requests for Production of Documents (7/27/01) for Request No. 11 set forth here: "Request No. 11: All extant school documents, records or reports in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access—but may not necessarily have queried the existence or required the production to date—so that the information, authorization or records they contain may be assessed for relevance to establishing the facts of Plaintiff's involvement with the school, the legitimacy of the alleged disbursement, and/or the existence of the alleged debt and the validity of Defendant's claim against Plaintiff. Response: See US0004-13. Defendant is not in possession, custody or control of any other documents that would satisfy this request;" Exhibits 2/E-F are not authenticated by evidence that they were in a place where, if authentic, it would likely be * * *
FRCP# 56(e)	The related Exhibit 2 declaration was not made on personal knowledge; did ,not set forth such facts as would be admissible in evidence in view of Defendant's lack of their possession/exclusion

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
	of their existence from deliberations for its action/decision related to Plaintiff. They have been produced in relation to any claim against Plaintiff, solely for Defendant's own defense in this suit. This fails to show affirmatively that Ms. Rasca is competent to testify to all 1985 the matters stated in Exhibit 2 relative to Exhibits 2/E-F—which is not a sworn or certified copy * * * see 34 CFR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(l), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) * * * record requirements related to a student in Defendant's relevant programs].
* * *	* * *
FRE# 901 (b)(9)	Defendant's Motion Exhibit 2 p. 3 #9 introduces Exhibit 2/F: "[a]ttendance was recorded by the instructors and entered into a computerized attendance system." The handwritten page for May, 1985, Defendant submitted as initial disclosure US00009 is not included in Exhibit 2/F. Using the initial disclosure numbers on the lower right of each page of Exhibit 2/F, the following may be conflrmed about the product attributed to a "computerized attendance system:" US000010 • omits column headings • omits class & student columns for 6/3-6/7 /85 • omits contract # & student columns for 7/1-7/31/85 • omits May, 1985, from running tally US000011 • omits column headings • no columns for contract # or name for 9/2-9/30/85 • omits May, 1985, from running tally US000012 • introduces column headings

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
	• name & class columns moved to right side of printout • begins June data with double-entry for 10/31/85 • repeats 6/12-7/31/85 & 9/2-9/5 with new columns • omits any monthly/running tallies US000013 • omits column headings • cuts off first entry • 3rd repetition of 9/9-9/30 • omits monthly/running/final tallies. There is no indication when these sheets were created, or that they are indeed the product of a vocational school (teaching airline computer systems) and doing business since May 2, 1967, such as TTCI (#99 1713 27, LA County, CA, County Recorder), keeping attendance records by computer system: they are not self-authenticating.

Respectfully submitted,

s/*Bruce Edwards* *10.15.01*

Bruce Edwards, Plaintiff *pro se* * * *[add/ph.] Date

#56 Motion (enlarge disp. resp. ddl.) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

(Filed United States District Court Denver, Colorado *BB* OCT 17 2001 James R. Manspeaker Clerk s/*D*)

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

Plaintiff's Motion for Enlargement of October 15, 2001, Period in which to Respond to Motion for Summary Judgment or, in the Alternative, Motion

to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1); Set by Minute Order filed October 2, 2001

Pursuant to D.C.Colo.LR 7.1F, Plaintiff hereby submits this motion as captioned above, due to the brevity of the period originally allotted and the requirement to produce responsive motions to strike because of the content of the motion to which Plaintiff has been ordered to respond. Plaintiff served/filed a similar request on October 8, but has received no answer from the Court to any motions he filed since October 1, 2001. Plaintiff is working in good faith to complete his responsive brief as close to the Court's deadline as possible; Defendant's introduction of evidence not part of the third quarter, 2000, final agency action/decision, which both parties agree as the time Plaintiff's cause of action arose, has complicated the response incredibly. Further, Plaintiff understood 20 days to be the standard deadline for response briefs of this kind, and respectfully asks for that full period to be applied in this case.

s/*Bruce Edwards* *10.15.01*
Bruce Edwards, Plaintiff, pro se Date
1001 Emporia Street, Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#59 Motion (strike #41 Ex. A) 10/22/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado
OCT 22 2001 James R. Manspeaker Clerk ___}

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

Fed.R.Civ.P. 12(f) Motion to STRIKE as inadmissible for Defendant: Exhibit A of *Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1);* and to RESTRICT related Fed. R. Civ.P. 26(a)(1)(B)

A "Exhibit 1: Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount: $2,500.00 to attend the Travel and Trade Career Institute (TTCI)" to appearance in this suit without inference between 5/6/85 and 4/28/01: Fed.R.Evidence 105

Pursuant to Fed.R.Civ.P. 12(f), Plaintiff pro se, Bruce Edwards, hereby submits, as captioned above, this "Motion to STRIKE Exhibit A/May 6, 1985 Guaranteed Student Loan Application," as for Defendant upon findings of insufficient defense, immaterial, impertinent or scandalous matter, on grounds set forth below with corresponding Federal Rules of Evidence (FRE) or Fed.R.Civ. P. (FRCP) numbers to indicate the main rule intended for those grounds, but not to limit consideration of other applicable rules; with grounds to "RESTRICT related Fed. R.Civ.P. 12(a)(1)(B)A Exhibit 1, under Fed.R.Evidence 105" immediately following grounds "to strike:"

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
FRE# 902(4)	Exhibit A is not, and cannot be (due to its incomplete condition) certified by CSAC, its custodian, as a true and correct copy of Plaintiff's student loan application from its public records, which would also contain other relevant documents and records; Defendant initially disclosed Exhibit A as a school record, so it is not admissible *for Defendant's purposes.*
FRE# 1001 (4)	Because it is incomplete/missing the bottom signature and identification of the other natural person signing it on the face, and the entire reverse side that the face says contains additional terms and conditions included in each party's agreement, Exhibit A is not a duplicate accurately reproducing the original, so is not admissible *for Defendant's purposes.*
FRE# 1003	Genuine questions arise as to the authenticity of Exhibit A as to "the lender" alleged to have

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
	originated any related loan therefrom, as to Defendant' s dual identification/representation of its source, and as to handling subsequent to its signing—its complete terms are not even available to verify through Defendant's submission. Under these circumstances it would be unfair to Plaintiff to admit Exhibit A in lieu of the complete, legible original and documents to support its valid use by a lender with whom Plaintiff had a proposed agreement, so it is inadmissible *for Defendant's purposes,* as evidence of the EDUC claim/support of Defendant's related decisions/actions against Plaintiff.
FRE# 104(a)	Exhibit A is not admissible as defense to Plaintiff's cause of action (collection activities/ Treasury offset) even as to preliminary agency decisions, because its relevance is conditioned on actual connection to Defendant's decisions/ actions related to a specific, alleged defaulted student loan claim against Plaintiff. The "FOR LENDER USE LOAN IDENTIFICATION" area of Exhibit A bears only a check mark, and there is no lender/loan identification on this submission from Defendant. The sole loan document Defendant provided Plaintiff prior to this suit was a promissory note he signed on June 17, 1985,[1] that identifies (on the Motion's Exhibit B, for example) the proposed originating lender related to his 1985

[1] September 4, 2001, Defendant's Answer to Plaintiffs Requests for Admissions (7/27/01): Admission#6/Answer, each set forth in their entirety here below:
[Requested Admission] "6. Prior to Plaintiff s original 1/200 1 filing with this Court in this matter, as far as copies of actual loan documents, Defendant only provided Plaintiff with copies of the promissory note related to the account"
"Answer:: Admit"

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

application for a guaranteed student loan to have been "First Independent Trust, O.E. Lender Code Number 828374 8700766," which Defendant's Brief (p. 4, #2) names immediately after introducing Exhibit A under "FACTS...A. Plaintiff's Loan," in reference to the Navarro Decl. ¶17. Neither the Navarro Decl. nor the Brief names another fmancial institution in relation to the EDUC claim at any point after introducing that "fact,"subsequently referring only to "the lender."

Defendant's "GSL Program Specific Screen" (Motion's Exhibit C) records "LENDER: 801178." Defendant did not include, as a Motion or Brief exhibit, disclosure of FRCP 26(a)(1)(B)C "Exhibit 4: Debt Level Information Screen [L109] and explanatory sheet" (L109 dated 1/23/01). That document identifies: "ORIGINATING LENDER: 801178 B OF A TRUSTEE C/O CMSC," also appearing under its "CLAIMING LENDER AND ADDRESS" entry. That "B of A" 801178 lender number also appears on Defendant's disclosure FRCP 26(a)(1)(B)B "Documents from California Student Aid Commission," similarly not included as an exhibit to subject Motion and Brief. In that one-page 12/31/92 "Contact History Report," CSAC's second earliest entry (3/19/87) contains "801178;" the earliest entry does not identify a lender. Without information under "FOR LENDER USE/LOAN IDENTIFICATION," Exhibit A fails to establish which of the two "originating" lenders in this matter were connected with said application. Not having received Exhibit A

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

prior to the filing of the Complaint,[2]

---

[2] September 12, 2001, *Plaintiff's Objections to Sufficiency of Defendant's Answer to Plaintiff's Requests for Admissions,* Admission/Answer/"Reason to amend Answer to Admission 7;" parties' exchanges related to requested admission #7, offered only for the truth of the assertion made in the main paragraph above at this footnote, are set forth in their entireties here below:
[Requested Admission] "7. Prior to Plaintiffs original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him." "Answer: Admit that, prior to this suit, Defendant did not have possession of any documents, nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant."
Reason to amend Answer to Admission 7: Defendant's possession of the documents that are the subject of the requested admission was not necessarily prerequisite to providing copies of them to Plaintiff, by request or order to the appropriate program participant(s). Good faith does not require that the Answer to the requested admission be qualified by a claim related to that limited aspect of logistics in not having providing Plaintiff such records and documents. ¶ *Also, Defendant's assertion, "nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant)," neither fairly meets the substance of the requested admission nor answers a good faith requirement to qualify this Answer; Defendant apparently means for these matters to be conclusively established upon admission under Rule 36 without this Court's decisions about required regulatory compliance with administrative procedures on collection, use, maintenance, dissemination and independent verification of information related to Plaintiff with such accuracy, relevance, completeness and timeliness as reasonably necessary to assure fairness in determinations adverse to him about the EDUC claim.* ¶ *As written, this Answer is an effective denial of the requested admission without fairly meeting its substance and substitutes an admission addressing Defendant's preferred perspective on thefact that Plaintiff did not receive any copies of the subject documents prior to Defendant's production of those limited materials under Rule 26(a)(1) disclosure.*

* * * RULE:	GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"
	for reference in Defendant's related preliminary or final agency actions/decisions, Defendant cannot establish its admissibility for its purposes based on its consequence to the "facts" of the EDUC claim
FRE# 106	Exhibit A omits the identify[sic] of the TTCI representative for that transaction; it contains language indicating further terms and conditions were part of the agreements, at #19 "conditions and authorizations given in the 'student certification' printed on the reverse of this application" and at #22 "the conditions given in the 'educational institution certification' printed on the reverse of this application," which ought in fairness to be considered contemporaneously with Exhibit A, requiring the introduction of the remainder of its front side and its entire back side, to quality[sic] for admissibility *for Defendant's purposes.*
FRE# 401	Plaintiff has never disputed having participated in enrollment/loan origination at TTCI—but denies and disputes the extent Defendant attributes to his involvement; including grounds described under FRE#104(a) herein, presentation of Exhibit A (as a small portion of otherwise absent "lender" documents, except for the promissory note Plaintiff also signed during TTCI's loan origination for him) does not tend to establish the disputed subsequent extent to which each process or liability included Plaintiff, so is inadmissible *for Defendant's purposes.*
FRE#402	Exhibit A is not relevant to the EDUC claim (see grounds/FRE#104(a) and FRE#402 herein), so it is not admissible *for Defendant's purposes.*
FRE#403	Because Plaintiff's participation in TTCI's loan origination for him in 1985 is not in dispute, presentation of Exhibit A only confuses the

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

issues of whether First Independent Trust executed/consummated the EDUC claim promissory note by an advance to Plaintiff according to its express written terms, if that disputed advance actually lead to the EDUC claim for Bank of America as the originating lender, and if Defendant's collection activities and actions/decisions against Plaintiff were justified.

Exhibit A also tends to mislead by implying subsequent lender action was taken for which documentation and records were in Defendant's possession prior to this suit,[3] possibly to imply substantial justification for not exercising the option to preserve lender records[4] (if, indeed, any ever existed) beyond regulatory retention expirations[5] for the EDUC claim-despite the

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[3] *See* requested admission #7 exchanges between parties in this matter set forth above in these footnotes.

[4] *See* source of Defendant's admissions identified in footnote 1 here above, from which admission/answer *[Plaintiff reserves right to object]* for Plaintiffs request #22 set forth here:
[Requested Admission] "22. Defendant did not exercise the option to preserve school, lender and state guarantor records beyond regulatory retention expirations."
"Answer: Object to this admission as containing multiple statements. Subject to and without waiving this objection, deny as to the school and state guarantor records, deny that Defendant received documents from the lender, admit as to lender."
[Plaintiff does not waive right to object that in Answer to requested admission #22, Defendant denies not exercising the option to preserve records with respect to CSAC, but see record retention required of CSAC cited where reserving right to object to Admission / Answer#7 versus single document listed in Defendant's FRCP 26(a)(1)(B)B; and institutional program-student record retention requirements of 34 CFR 682.604(g)(4), p. 731, and under 34 CFR 682.610(b), p735, incorporates / references 34 CFR 668.24(c)-(e), pp. 422-3 versus Defendant's FRCP 26(a)(1)(B)A.

[5] 34 CFR 682.414(a)(4)(iii), p. 703

* * * RULE:	GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"
	fact that Defendant was aware Plaintiff had not made any voluntary payment for the alleged loan at the time of accepting the default claim against him.[6] so is inadmissible * * *
FRE# 901 (b)(7)	Where a Loan Application is normally a part of public records/reports authorized by law to be recorded or filed where items of this nature are kept,[7] and Exhibit A is implied to reflect that ,by Defendant's inclusion of it as evidence in the subject Motion/Brief to which Plaintiff has been required to respond,[8] a version of Exhibit A was originally disclosed by Defendant under the FRCP 26(a)(1)(B)A section designating school records/documents and it has not been authenticated/identified as a true and correct recorded or filed copy from the public office where items of this nature are kept, so is inadmissible * * *
FRE# 901(b) (8)(A)	* * * the facsimile transmission stamp partially appearing across the top of Exhibit A * * * [the same incomplete document presented to Plaintiff as FRCP 26(a)(1)(B)A "Documents from Travel and Trade Career Institute: Exhibit 1: Application for California Guaranteed Student Loan * * *"] was sent through "EDFUND POST-DEFAULT SERVI 916 526 7209," the facsimile * * * stamp of CSAC's servicer, appearing at the top of the only document submitted for Defendant's FRCP 26(a)(1)(B)B "Documents from California Student Aid Commission."

[6] *See* source of admissions identified in footnote # 1 above; requested admission/answer #21 are set forth in their entirety here: [Requested Admission] "21. Defendant was aware that Plaintiff had not made any voluntary payment for the alleged loan at the time of accepting the default claim against him." "Answer: Admit."

[7] 34 CPR 682.409(c)(4)(iv), p. 734

[8] Minute Order Entered by Magistrate Judge Boyd N. Boland filed October 2, 2001.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
	Defendant's * * * response to Plaintiff s request for production of all extant school documents, records or reports related to the EDUC claim[9] revealed * * * the school's "records" were not supported by a complete student record related to him, and had been misrepresented as more substantial than they are, by FRCP 26(a)(1)(B)A disclosure listing. Defendant did not meet FRCP 26(e)-(e)(1) duty to correct filing initial disclosure of this * * * as a "school document/ record." Even if not incorrectly attributed to TTCI in Defendant's subject Motion/Brief, Exhibit A has been submitted or filed by Defendant as originating from two sources, which was misleading, so it is not in such condition as to create no suspicion concerning its authenticity *for Defendant's purposes.*
FRE# 901(b)(8)(B)	* * * Exhibit A is not authenticated/identified by evidence that it was in a place where, if authentic, it would likely be, so is inadmissible *to establish validity for the EDUC claim* * * *

[9] On July 27, 2001, Plaintiff mailed Requests for Documents and Complete/Legible Initial Disclosure; on September 7, 2001, Defendant mailed Defendant's Responses to Plaintiffs Interrogatories and Requests for Production of Documents/Answers to Requests for Production of Documents. The parties' exchanges with respect to item 11 are set forth here in their entireties:
11. All extant school documents, records and reports, in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access—but may not necessarily have queried the existence or required the production to date—so that the information, authorizations or records they contain may be assessed for relevance to establishing the facts of Plaintiff's involvement with the school, the legitimacy of the alleged disbursement, and/orthe existence of the alleged debt and the validity of Defendant's claim against Plaintiff.
Response: See US0004-13. Defendant is not in possession, custody or control of any other documents that would satisfy this request.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
FRE# 1007	* * * Exhibit A is not admissible *for Defendant's purposes* as if Plaintiff's acknowledgment of such limited participation at TTCI would account for the failure to produce the loan application that Defendant claimed to have disclosed as Fed.R.Civ.P. 26(a)(1)(B)AExhibit 1.
FRCP# 37(c)(1)	Without substantial justification, Defendant failed to correct, as required by Fed.R.Civ.P. 26(e)(1), identification of the source of Exhibit A by initial disclosure of it as a document from the school. This misidentification lent unjustified weight to the school's "records," that turn out to be self-serving "attendance" attributed to Plaintiff to support grant checks also attributed to Plaintiff much later than Plaintiff has long been on record in identifying his withdrawal without further contact with the school—Defendant effectively falsified the "school records" to lend credence to assertions by that interested party (whom Plaintiff is long on record as believing signed his name)[10] of "legitimate" receipt of loan and grant proceeds, supported only by unauthenticated "attendance records." This was misleading to Plaintiff and the Court. Failing required prompt correction of its source, Exhibit A should is[sic] inadmissible at trial, a hearing, or on a motion, *for Defendant's purposes.*
FRCP# 56(e)	Exhibit A is not a sworn or certified true and correct copy of the application referred to in ¶17 of the Navarro Decl. submitted with Defendant's subject Motion and Brief as Exhibit 1, so is inadmissible *for Defendant's purpose of supporting the EDUC claim / related actions.*

[10] Exhibit E at 10/30/97 entry, "STATES HE DID NOT HAVE A HIGH DIPLOMA/GED AND THT THE SCH SIGN HIS NAME"

* * * RULE:	GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"
* * *	* * *
FRE# 901 (b)(9)	Defendant has disclosed that, as late as April 20-28, 1992 * * * CSAC allowed the guarantee of "loans" based on receipt of applications from loan-originating schools prior to, and sometimes without, subsequent lender approval/advance of the requested loans, and allowed third-party transfer of loans from one lender to another.[11]

[11] * * * Finding 1: Administrative Cost Allowance Receipt on Loans Prior to Lender Approval A participating school may transmit an application electronically to CSAC for guarantee prior to the lender's approval. If the lender never sends the application back to EDS, the loan is reported as an undisbursed loan and ultimately canceled. In this instance. Administrative Cost Allowance is paid on a "loan" when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school. Citation: 34 CFR 682.100(b)(1); 34 CFR 682.407 Required Action: A guarantee agency guarantees lenders against losses. Thus, the agency may not receive Administrative Cost Allowance (ACA) on a loan on which it issues a "guarantee" unless the lender has decided to make the loan. The agency may receive ACA on a loan only when the lender has notified CSAC that the loan was accepted. In response to this report, the guarantee agency must detail the procedures which have been adopted to assure that CSAC does not bill for ACA on loans before lenders accept those loans.
Finding 27: Current Holder Code: System Allows Third-party Transfers of Loans The EDS System allows the transfer of loans between two lenders by a third party (neither the buyer nor the seller). The decision not to place an edit in the system to prevent third-party transfers of loans between lenders was stated to have been made to accommodate servicers so that loans could be transferred on behalf of their clients. However, ED staff on site at Lender "A" actually transferred loans on the CSAC system from Lender "B" to Lender "C." (It must be noted that, after this process, the loans were transferred back to the correct holder so that servicing would not be affected.) Citation: 34 CFR 682.401 (b) (10) Required Action: Procedures * * * with the response to this report.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

As late as February 18, 1994, [after Exhibit C's "DATE ENT: 05/25/93" 'date ED accepted assignment from guarantor'] Defendant found CSAC policy allowed cancelling and reissuing of loans by lender-override; Defendant was concerned this was used without adequate monitoring by CSAC, specifically if the correct reason code (cancelled or unconsummated) was not keyed in by the lender.[12]

Defendant's January 26-February 6, 1998, fIrst review finding includes, "[s]ome years ago, loans tainted by fraud (held by Bank of America as trustee for California Student Loan Finance

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[12] **By September 10, 2001, production of documents for Defendant's response to Interrogatory #43 * * *:**
Under cover of June 10, 1994, letter to Mr. Michael Carona, Chairman, California Student Aid Commission, 1515 "S" St, Suite 500, P.o. Box 510845, Sacramento, CA 94245-0845 from Bonnie S. Gonzalez, Acting Chief, Guaranteed Student Loan Branch; 1/31-2/4, 2/7-2/11 & 2/14-2/18/94 interim report:
FINDINGS AND REQUIREMENTS, items #19 set forth here:
Finding 19: Excessive Collection of Administrative Cost Allowance
It is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions. The Administrative Cost Allowance (ACA) paid to the agency by the Department is calculated by subtracting the unconsummated loans from the total loans guaranteed. Since ACA is not paid for unconsummated loans, the loan must be correctly identified as cancelled or unconsummated by the lender.
The Department is concerned that lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or unconsummated) is not keyed in by the lender, the Agency may receive ACA to which it is not entitled.
Citation: 34 CFR 682.407
Required Action: The Agency must provide information as to the extent of this activity on the agency's complete loan portfolio. CSAC stated that these loans can be identified through use of the "Y" code in the "edit override" field. Upon receipt of documentation that will provide an accurate estimate of the extent of this issue, the Agency may be given further required action.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

Corporation, serviced by United Education and Software) were to be identified..."[13]

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[13] * * * Under cover of August 14, 1998, letter to Ms. Jackie Tsang, Acting Executive Director, California Student Aid Commission, * * * from N. Rao Palagummi, Senior Guarantor & Lender Review Specialist, Guarantor & Lender Oversight Service; 1/26-2/6/98 review report: FINDINGS AND REQUIRED ACTIONS * * *:
Finding 1: Incorrect listing of outstanding loans by the Financial Aid Processing System (FAPS): It appeared that the Financial Aid Processing System listed many loans as outstanding when it is likely they are paid in full. The Agency began its lender loan reconciliation effort in approximately 1994; it is not yet completed. The Agency has a listing of 215 LIDs[*] (approximately 500,000 loans) that are not yet 100% reconciled as part of its reconciliation effort and has further identified that many of the loans attributable to these LIDs have been outstanding for over ten years. Some examples of the lenders on this list include:
* * * 801178 Bank Of America, Trustee for CMSC # loans 11,342
828374 First Independent Trust, # loans 2,822
Additionally, the Agency has a report that compares the loans on FAPS to the loan balances transmitted by the lenders for NSLDS purposes (Lender NSLDS[*] Quarterly Data Compliance Report). The LIDs and their associated loans on the NSLDS report largely appear to be the LIDs on the list of lenders whose portfolios have not yet been reconciled. It appears, therefore, that not only are the loans paid-in-full greatly understated but also reported incorrectly to NSLDS. Some years ago, loans tainted by fraud (held by Bank of America as trustee for California Student Loan Finance Corporation, serviced by United Education and Software) were to be identified; we were unable to confirm whether any of the unreconciled loans should have been marked unreinsurable. [Plaintiff's Note: emphasis added to "flag" main paragraph quote.] Citation: 34 CFR 682.414 Required Action: With the response to this request, the Agency must provide (1) information on the action/steps it anticipates taking to conclude the lender reconciliation to 1/1/95; (2) the procedures it will implement to ensure that the data reflected on the FAPS and the data reported to NSLDS for loans in repayment agree; (3) its plans for lender reconciliation of loans guaranteed subsequent to 1/1/95; and (4) assurances that the Bank of America fraud loans have been properly coded.
[* Plaintiff's Notes: believe LIDs refers to Lender Identifications and NSLDs refers to National Student Loan Data System.]

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

Defendant's earliest CSAC review report (April, 1992) provided as discovery in this matter also mentioned these 'B of A c/o CSLFC (UES)' loans, in ¶2/Finding 32).

Plaintiff signed the application and the promissory note at TTCI (loan-originator), school code #007926 (see #25 on Exhibit A, and between Borrower Name and SSN on Exhibit B). No lender documents from any lender not the loan originating school have been produced

* * *

In the absence of optional/required lender records, Exhibit A is not authenticated by CSAC process/system producing accurate results and proving the EDUC claim resulted from guaranteed on application from TTCI only after lender approval/advance, or that Bank of America appearing as "originating lender" for the EDUC claim is not the result of fraud; thus, it is inadmissible *for the purposes of supporting the EDUC claim and Defendant's related actions. / decisions adverse to Plaintiff.*

Grounds to RESTRICT corresponding initial disclosure of Defense Fed.R.Civ.P.(12)(a)(1)(B)A "Exhibit 1..." to Appearance in this Suit Without Inference between 5/6/85 and 4/28/01

* * * it would not be just to infer or attribute more than the facts of which BOTH parties can be certain:

a) Plaintiff acknowledges signing a loan application at TTCI in May of 1985;

b) Fed.R.Civ.P. 26(a)(1)(B)A Exhibit 1 is believably a copy of a portion of Plaintiff's 1985 application, but cannot be deemed the copy of any "loan application," and has no merit as a legal document;

c) after Plaintiff s signing a loan application at TTCI, neither he nor Defendant has certain knowledge of the uses to which it was applied before this suit until after

the turn of the century when Defendant "disclosed a copy;"

d) writing and printing can be discerned, and so would be admissible for purposes of establishing the content of those portions as disclosed to Plaintiff and the Court, but inadmissible for purposes of establishing the valid execution of the terms and conditions of the original agreement that has not been entered into evidence,

e) this "loan application" was first introduced by Defendant to Plaintiff with respect to the EDUC claim against him, under Fed.R.Civ.P. in this matter on April 26, 2001, with expressed and implied representations, at that time and since, about its source, content and history—promoting presumptions about Plaintiff, TTCI, "the lender," CSAC, and Defendant performances subsequent to its signing.

Limited to the scope of the above-listed "facts" and their just inferences, as the certain knowledge of both parties in this matter, a "*partial loan application copy*" is admissible for:

- demonstrating its incompleteness;
- demonstrating its legible contents;
- demonstrating inclusion in "school records" that Plaintifffirst received on April 28, 2001, introducing (versus Plaintiff's previously undisputed declared/recorded recollection of limited involvement with TTCI) an implied more complete/genuine school record to support the EDUC claim against Plaintiff's years-old-memory than justified—only days prior to required May 3, 2001, settlement statement production by order of this Court;
- demonstrating probable impact of its first introduction as part of "school records" on Plaintiffs good-faith concession/settlement statement of May 3, 2001, that *if Defendant does have evidence proving a claim Plaintiff had no record, recollection, or belief of incurring,* Plaintiff should include its payment in any

settlement for his cause of action –where the impressions given the Court—*both* by such concession (in which Plaintiff did not acknowledge remembering the involvement TTCI attributed him, only that official records might prove his memory was faulty), *and* by the inflated "authenticity" of that "disclosure" from the TTCI implying a complete/genuine set of 1985 records related to Plaintiff—more likely than not had a detrimental effect on the reception of Plaintiff s subsequent statements and activities in this suit;

- demonstrating the lack or absences of facts on subject copy with respect to reasonable conclusions upon dispute related to the handling of the original document; and
- comparison of the contents/condition of the subject copy to legal and regulatory requirements related to it by all involved institutions and agencies.

Respectfully submitted in its entirety, including footnotes following, as signed and dated below:,

s/*Bruce Edwards* — *10.19.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

* **NOTE: Unless otherwise indicated, all citations herein refer to CFR Revised as of July 1, 1999, or USC Revised as of January 6, 1999, upon which Plaintiff mainly relied in developing his Complaint**—before 6/6/01 receipt of the first legible copy of the reverse side of the Note (Exhibit B) on which Paragraph XII identifies interpretive code/regulations.

#62 Motion (strike #41 Ex. B) 10/23/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 23 2001 James R. Manspeaker Clerk DB}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Fed.R.Civ.P. 12(f) Motion to STRIKE as Inadmissible for Defendant: Exhibit B of *Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1);* and to RESTRICT related Fed. R. Civ.P. 26(a)(1)(B)A "Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985" as Defense Presented, Without Inference between 6/17/85 and 4/28/01: Fed.R.Evidence 105

Pursuant to Fed.R.Civ.P. 12(f), Plaintiff pro se, Bruce Edwards, hereby submits, as captioned above, this "Motion to STRIKE Exhibit B/June 17, 1985 Promissory Note and Disclosure Statement," as for Defendant upon findings of insufficient defense, immaterial, impertinent or scandalous matter, on grounds set forth below with corresponding Federal Rules of Evidence (FRE) or Fed.R.Civ.P. (FRCP) numbers to indicate the main rule intended for those grounds, but not to limit consideration of other applicable rules; with grounds to "RESTRICT related Fed. R.Civ.P. 12(a)(1)(B)A Exhibit 2, under Fed.R.Evidence 105" as for Plaintiff[sic], immediately following grounds "to strike:"

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
FRE# 401	* * * Defendant's claim turns out to be for a different originating lender than Plaintiff had any agreement with (see FRE#104(a) grounds); Exhibit B does not tend to make the existence of any fact of consequence to Defendant's collection activities/final agency action *for the EDUC claim / Bank of America* more or less probable, so is not relevant *for Defendant's purposes.*
FRE# 402	As described herein under FRE#104(a), FRE#106, and FRE#401 grounds, Exhibit B *is not relevant to the EDUC claim and Defendant's related actions / decisions against Plaintiff* and, therefor, is not admissible *for Defendant's purpose* of supporting its defense.
FRE# 104(a)	Exhibit B identifies the party with whom Plaintiff entered an agreement, contingent upon the later advance to him of a student loan, as "First Independent Trust, O.E. Lender Code Number 828374 8700766." Amid frequent references in the Motion/Brief/Exhibit 1 to "the lender," Defendant did not simultaneously present the Court with its FRCP 26(a)(1)(B)C "Exhibit 4: Debt Level Information Screen [LI09] and explanatory sheet," which shows: "ORIGINATING LENDER: 801178 B OF A TRUSTEE C/O CMSC," also appearing under the "CLAIMING LENDER AND ADDRESS," *part of the record for Defendant's claim* of an outstanding defaulted student loan against Plaintiff "supported" by Exhibit B. * * * Note's Paragraph X. *Transfer of Loan to New Holder*[1]), * * * does not make it admissible for Defendant's purposes.

[1] *See* Plaintiffs Motion to Extend Leave to Amend Complaint and attached Brief filed on July 2, 2001, *Enclosure 1 p. 3.*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
FRE# 106	The original agreement, only partially shown in Exhibit B, was to be interpreted under code and regulations expressly identified in its Paragraph XII *General* provisions[2], was subject to all other provisions of the promissory note, and depended on First Independent Trust's performance. All agreement terms, interpretive code and regulations, and documentation of alleged lender performance ought in fairness be considered contemporaneously with Exhibit B for it to be admissible as relevant *for Defendant's purposes.*
FRE# 403	Even if Exhibit B were relevant to Defendant's claim of a Bank of America-originated loan/default (see FRE#l04(a) grounds at quote from Defense FRCP 26(a)(1)(B)C Exhibit 4), without evidence that Plaintiff received any advance/incurred any obligation according to the terms of a promissory note, determinations about Defendant's collection activities and formal agency action against Plaintiff (Complaint ¶¶2-3) would not be addressed by Exhibit B' s contents. Exhibit B adds confusion to the issues, misleading away from the lack of evidence showing an obligation on Plaintiff s part that would be prerequisite to proving the validity of *the EDUC claim and Defendant's related actions / decisions;* so Exhibit B is not admissible *for Defendant's purposes.*
FRE# 901(a)	Introduction of Exhibit B (Brief, p. 4. #2, referencing the Navarro Decl. ¶17) is immediately followed by, and obviously implied as based upon First Independent Trust's promised performance/Plaintiff's resultant obligation, "Plain-

[2] *See* Plaintiff s Motion to Extend Leave to Amend Complaint and attached Brief filed on July 2, 200 I, *Enclosure 1 p. 3*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	tiff defaulted on his loan on April 15, 1987" (Brief, * * * p. 4 #3). * * *: Not only is there an absence of required lender documents/records to support a loan/default claim[3] from Exhibit B for Bank of America as originating lender (see FRE#104(a) grounds), but also the original promissory note's ¶ V Whole Loan Due, on the first day of non-payment (after 10 day's grace), as determined by its ¶2 Date Note Becomes Due, six months after Plaintiff stopped carrying at least one-half TTCI' s normal full-time workload (by Defendant's own Exhibit 2/F "attendance records" produced for this suit by the loan-originating school, which Plaintiff denies are true and correct) on September 23, 1985. This would set the alleged default date at 3/23/86. Upon required timely-lender-default-claim-filing within 90 days of default,[4] the resulting required timely payment within 90 days[5] would be (3/23/86 + 6 mo =) 9/23/86, not the "ORGCLMPAYDTE: 4/16/87" of Exhibit C. This "date guaranty claim paid" being the next day after Defendant charges Plaintiff defaulted cannot be read in either the Brief s "FACTS, A. Plaintiff's Loan," p. 4 #3, "...[t]hereafter, the lender requested payment from CSAC, which paid the lender.. ." or the identical phrasing from Exhibit 1, p. 7 #18). Even if reading the

[3] CSAC (state guarantor for EDUC claim against Plaintiff) shall maintain, among other records, by 34CFR682.414(a)(1)(ii)(A), "All documentation supporting the claim filed by the lender;" [=§682.51I (b), p. 723], "for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures," [§682.414(a)(2)].

[4] 34CFR682.406(a)(5), p. 679

[5] 34CFR682.406(a)(8), p. 679

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	lender's timely default-claim—filing to be within 90 days of 'the end of the 120 day[6] default period,' instead of "default," and allowing 30 days for rejection/re-filing with proper documentation,[7] a timely payment would have been on 2/23/87, not 4/16/87. The default claim was paid after CSAC recorded Bank of America's lender number, 801178, in the second entry (3/19/87)[8] of its "History;" which demonstrates it was not paid to the lender on Exhibit B. These discrepancies, raised by *Complaint* ¶21a, fail required authentication that Exhibit B is *evidence supporting the EDUC claim / Defendant's collection activities and final agency action against Plaintiff* precedent to its admissibility *for Defendant's purposes.*
FRE# 901 (b)(7)	Defendant initially disclosed Exhibit B as * * * 'A. Documents from Travel and Trade Career Institute' for Fed.R.Civ.P. 26(a)(1)(B). When introducing that Plaintiff signed a promissory note in "FACTS.. .A. Plaintiff' s Loan" of the Brief (p.4 #2), Defendant fails to make any connection between it and the school ("TTCI'), including the fact that the original of Exhibit B (and of Exhibit A, loan application) were completed, as part of enrollment, at TTCI's loan

[6] 1984 Edition, 34CFR682.200 at *Default:* "[t]he failure of a borrower to make an installment payment when due...provided that failure persists for-(a) 120 days for a loan repayable in monthly installments..."

[7] 34CFR682.406(a)(6), p. 679

[8] Defendant's Initial Disclosure, Rule 26(a)(I)(B)B "Documents from California Student Aid Commission: Exhibit I: Contact History Report dated December 31, 1992," a single page that chronologically begins: "022687...CON...ADR...1000...PO BOX 9821...LONG BEACH...CA 90410-21343263" followed immediately by "031987...252...LC...10l0...870316 801178 [emphasis added]."

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	origination[9] for Plaintiff, certifying his application (as an eligible student/borrower[10] falsely, unbeknownst to Plaintiff, and prohibited whether done willfully or negligently[11]) and submitting it to "a participating lender,"[12] that would appear from Exhibit B to have been First Independent Trust, but from Defendant's claim to have been Bank of America. * * * failure to promptly correct disclosure to the Court and Plaintiff of Fed.R. Civ .P. 26(a)(1)(B) A "Documents from Travel and Trade Career Institute... Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985," as not having come from TTCI, required by Rule 26(e), means that Exhibit B has not been authenticated as from the public office where items of this nature are recorded/filed, so is inadmissible * * *.

[9] 1984 Edition, 34CFR682.200, p. 479, at "(a) [a] school determines who will receive a loan and the amount of the loan; or (b) [t]he lender has the school verify the identity of the borrower or complete forms normally completed by the lender."

[10] Plaintiff did not receive his high school diploma until 1999—and did not realize that, or its equivalent, was prerequisite for academic eligibility in the FFEL programs (34CFR668.32(e), pp. 463-4); TTCI neither determined whether he had a high school diploma nor that his enrollment (not requiring a high school diploma/equivalent) in classes at a community college "beyond the high school level" prior to the 1984-5 school year (see Exhibit A, #12) did not meet the definition of a first academic year in a qualifying educational program (§600.2) to have waived applicable loan/subsidy limits [1982 Edition, 20USC: § 1075(a)(1)(A), p. 273 and §1078(b)(1)(A)(i), p. 282] and first-year student/borrower handling-including prerequisite commercial-lender denial of a loan [1982 Ed., 20USC1083(a)(1)(b), p. 306] and $1,500 single-disbursement limits [1982 Ed., §1078(b)(1)(A)(ii), p. 282].

[11] 34CFR682.609(a), p. 734

[12] 34CFR682.102(a), p. 591

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
FRE# 901(b) (8)(A)	Defendant's contradictory record of the EDUC claim originating lender being Bank of America (Exhibit C, lender #801178); the 24-hour borrower-default-to-guarantor-claim-payment span (Exhibit C, 04/15/87 and 04/16/87, respectively) attributed to alleged lender performance for Exhibit B—which default date is inconsistent with the original promissory note's terms (see FRE#901(a) grounds); omission of mentioning the school's role in originating Exhibit B in the Brief; and false/uncorrected disclosure as a document from TTCI, all fail to show it in such condition as to create no suspicion concerning its authenticity for the purposes of supporting the EDUC claim and Defendant's related actions/decisions.
FRE# 901(b) (8)(B)	See FRE#901(b)(8)(A) grounds herein. Exhibit B is not authenticated as from a place where a Federally-guaranteed and validly consummated promissory would likely be, so is inadmissible for the purposes of supporting the EDUC claim and Defendant's related actions/decisions.
FRE# 901 (b)(9)	* * * There has been no disclosure of Plaintiff's endorsement on a loan check either from First Independent Trust (Exhibit B) or from Bank of America (Exhibit C, lender #801178); * * *. CSAC is required to retain[13] the documents that must be attached to the lender's Claim for Reimbursement form (default-claim) filing[14] for five years after the loan is paid in full/written off;[15] but Defendant has never provided Plaintiff with evidence of the alleged

[13] 334CFR682.414(a)(I)(ii)(A), p. 702-3
[14] 34 CFR682.511(b)(1), p. 723
[15] 34CFR682.414(a)(2), p. 703

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	loan advance/default[16] (see Complaint ¶¶7, 10b, 11, 13, 15-20, 23/Exhibit H, 24/Exhibit I, 34/Exhibit K, and 37) and "is not in possession" of such (or any) lender documents for the EDUC claim.[17] Defendant has disclosed that *[cont'd....]*

[16] *Dated/mailed September 4, 2001,* Defendant's Answer to Plaintiffs Requests for Admissions (that was dated/mailed 7/27/01) for items #9 and #26 are set forth below:

9. Prior to Plaintiffs original 1/2001 filing with this Court in this matter, Defendant did receive disputes and objections from Plaintiff that included statements related to his attendance and withdrawal at the school, **his not having received the alleged loan, his not having received contact from the lender or state guarantor about a loan or default,** and his not having received verification of debt in response to his 1993 verbal and written responses to an initial demand re-ceived from Defendant at his California residence. [emphasis added. *Plaintiffs note: receipt of the initial demand in 1993 "at his Califor-nia residence" was the only instance of successful postal forwarding to his then-current address-not tihe one in Defendant's records that was used without change for the next 2.5 years.*] Answer: Admit.

26. Defendant recorded Plaintiff' s objections that the promissory note had not been executed because he had not received a loan from the lender, but Defendant did not provide other loan documents or records *in response to thhese objections.* Answer: Admit

[17] *Mailed June 29, 2001, incorporating General Objections (to the extent each request seeks information subject to the attorney client, work product doctrine or deliberative process privilege; producing all non-privileged responsive information and reserving the right to supplement in accordance with Fed.R.Civ.P.) without waiver in each specific response;* Defendant's Responses to Plaintiff's Interrogato-ries, dated 6/25/01, preceded by each request as identified, are set forth * * * Plaintiff Interrogatory #25 to Defendant on June 1. 2001: What evidence is or should have been available to Defendant demonstrating that the lender provided Plaintiff with a written statement of required disclosures at or prior to the beginning of the repayment period, including the scheduled dated the repayment period was to begin, the due date of the first installment and the number, amount and frequency of payments? RESPONSE NO. 25: Pursuant to 20 U.S.C. §1078(2)(E)(ii), the lender is required to notify the borrower of the date on which the repayment period begins. Under 20 USC

§1083, the lender is required to provide the borrower with an explanation of the terms of the loan and the terms of the repayment of the loan. See also 34 C.F.R. §682.205. Defendant is not in possession of any such documents.

Plaintiff Interrogatory #26 to Defendant on June 1. 2001: What evidence is or should have been available to Defendant demonstrating the lender's loan servicing, collection or due diligence activities with regard to the subject claim? RESPONSE NO. 27[sic]: Defendant may have been able to obtain such documents from the lender or guaranty agency when he first defaulted on the loan, however Defendant is not in possession of the lender's [C]laim for [R]eimbursement form which would have included its due diligence efforts.

Plaintiff Interrogatory #27 to Defendant on June 1.2001: Which, if any, of the following did the lender attach to the subject claim: a collection history; a copy of the final demand letter; originals or copies of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan-whether that correspondence involved the original lender, a subsequent holder, or a servicing agent; evidence, if applicable, of requests by the lender to ED for skip-tracing or preclaims assistance; and/or any additional records documenting the lender's right to have received payment of the guarantee for the subject claim? RESPONSE NO. 27: The lender's Claim for Reimbursement form typically includes a completed form including date and amount of disbursement of the loan, date repayment began, date of default, collection efforts including a log of telephone calls and letters sent and requests for skip-tracing or preclaims assistance, amount of principal and interest outstanding an any other documents that the lender may choose to attach.

*Also, dated/mailed September 7, 2001, incorporating General Objections * * * without waiver * * ** Defendant's Responses to Plaintiff's Interrogatories [** *] And Requests for Production of Documents; preceded by corresponding request as identified * * *:

Request # 1. A copy of Plaintiff's 6/21/85 required signature of endorsement, whether upon deposit in an account of his own or TTCI's, on the loan check allegedly advancing funds to him.

Response: Defendant is not in possession custody or control of any such document.

Request # 12. All extant lender documents and records, in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access-whether or not previously sought from the lender by Defendant in relation to the EDUC claim against Plaintiff or to the matter before this Court-particularly those containing original writings and signatures, so that the information, authorizations or records they contain may be assessed for relevance to establishing the facts of the school's receipt

of the lender's advance of funds attributed as a loan to Plaintiff, of the lender's loan servicing and collection activities, and of the existence of the alleged debt and the validity of Defen-dant's claim against Plaintiff. Response: Defendant is not in possession. custody or control of any such document.

* * * *September 4, 2001, Defendant's* * * *Admissions* * *

Admission # 1. With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the alleged 6/21/85 loan disburse-ment showing Plaintiffs required endorsement in receipt of the alleged loan check. Answer: Admit that Defendant has not provided a copy of the endorsed loan check but has provided Plaintiff with numerous copies of his signed promissory note. * * *

Admission #2. With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the original receipt from the school at the time of the alleged 6/21/85 loan advance into the school's account purportedly on Plaintiffs behalf. Answer: Object to admission as unclear and ambiguous as to definition of "original receipt from the school." Subject to and without waiving this objection, admit that Defendant has not provided Plaintiff with a receipt of loan from school because no such receipt exists.

Admission #3. With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, any copies of written contract[sic] of any kind between the lender and Plaintiff either at the time of, or at any time following, the alleged 6/21/85 advance of loan funds, up to and including the 1987 lender's filing of a default claim. Answer. Deny. [* * *"written contact"* * *]

Admission #7. Prior to Plaintiffs original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him. Answer: Admit that, prior to this suit, Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant. * * *

Admission #8. Prior to Plaintiffs original 1/21001 filing with this Court in this matter, as far as verification of the debt either offered for Plaintiff's timely written disputes to certain demands or indicated as required by Plaintiff in writings to Defendant (or Defendant's agents), Defendant did not provide Plaintiff with a document or record show-ing evidence of the alleged 6/21/85 disbursement for the EDUC claim against him. Answer: Admit: Defendant provided Plaintiff with a copy of the promissory note. * * * *

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	[...cont.] that CSAC's system has been found: • to allow the guarantee of "loans" based on receipt of an application from a loan-originating school prior to and sometimes without subsequent lender approval/advance of the requested loan, • to allow third-party transfer of loans from one lender to another, and • to allow lender-override of cancelled unconsummated loan status.[18]

[18] **Under cover of September 10, 2001, letter to Plaintiff from Peter Krumholz, Assistant United States Attorney: "* * * Enclosed please find copies of the documents referenced in oor response to your interrogatory #43. Sincerely...;" the "bulleted" items in the main paragraph appear, in the same order as the three "findings" here below:**
Under cover of July 10, 1992, letter to Dr. Samuel M. Kipp, III, Executive Director, California Student Aid Commission, P.O. Box 510845, Sacramento, CA 94245-0845 from Linda M. Stoddard-Tsutsui, Chief, Guaranteed Student Loan Branch; April 2028, 1992 review report: FINDINGS AND REQUIRED ACTIONS:
Finding 1: Administrative Cost Allowance Receipt on Loans Prior to Lender Approval A participating school may transmit an application electronically to CSAC for guarantee prior to the lender's approval. If the lender never sends the application back to EDS, the loan is reported as an undisbursed loan and ultimately canceled. In this instance, Administrative Cost Allowance is paid on a "loan" when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school. Citation: 34 CFR 682.100 (b) (I); 34 CFR 682.407 Required Action: A guarantee agency guarantees lenders against losses. Thus, the agency may not receive Administrative Cost Allowance (ACA) on a loan on which it issues a "guarantee" unless the lender has decided to make the loan. The agency may receive ACA on a loan only when the lender has notified CSAC that the loan was accepted. In response to this 'report, the guarantee agency must detail the procedures which have been

adopted to assure that CSAC does not bill for ACA on loans before lenders accept those loans.

Finding 27: Current Holder Code: System Allows Third-party Transfers of Loans The EDS System allows the transfer of loans between two lenders by a third party (neither the buyer nor the seller). The decision not to place an edit in the system to prevent third-party transfers of loans between lenders was stated to have been made to accommodate servicers so that loans could be transferred on behalf of their clients. However, ED staff on site at Lender "A" actually transferred loans on the CSAC system from Lender "B" to Lender "C." (It must be noted that, after this process, the loans were transferred back to the correct holder so that servicing would not be affected.) Citation: 34 CFR 682.401(b)(10) Required Action: Procedures that will strengthen system security and that will disallow transfers of loans between two lenders by a third-party must be enacted. A descrip-tion of the new system controls, and a certification that the controls have been enacted and tested for reliability, must be submitted with the response to this report.

Under cover of June 10, 1994, letter to Mr. Michael Carona, Chairman, California Student Aid Commission, 1515 "S" St., Suite 500, P.O. Box 510845, Sacramento, CA 94245-0845 from Bonnie S. Gonzalez. Acting Chief, Guaranteed Student Loan Branch; 1/31-2/4, 217-2/11 & 2/14-2/18/94 interim report: FINDINGS AND REQUIREMENTS:

Finding 19: Excessive Collection of Administrative Cost Allowance It is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions. The Administrative Cost Allowance (ACA) paid to the agency by the Department is calculated by subtracting the unconsummated loans from the total loans guaranteed. Since ACA is not paid for unconsummated loans, the loan must be correctly identified as cancelled or unconsummated by the lender.

The Department is concerned that lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or unconsummated) is not keyed in by the lender, the Agency may receive ACA to which it is not entitled. Citation: 34 CFR 682.407 Required Action: The Agency must provide information as to the extent of this activity on the agency's complete loan portfolio. CSAC stated that these loans can be identified through use of the "Y" code in the "edit override" field. Upon receipt of documentation that will provide an accurate estimate of the extent of this issue, the Agency may be given further required action.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	Prior to this suit (see Complaint ¶¶25-33, inclusive), Plaintiff received one direct answer, "[y]ou state that you did not receive the funds from your student loan. The funds from student loans are frequently applied by schools to enrollment expenses... [s]tudents frequently do not directly receive the funds."[19] Defendant's postulations "[b]orrowers who have FFELP loans that were disbursed prior to [1/1/86] are, according to [Defendant's] policy, eligible for..."[20] and "...[Plaintiff] received the loans in-kind at least by attending the school.. .,"[21] as relating to a June, 1985 agreement/ loan, besides being based on the absence—or only recent "production"—of "evidence" to suggest that Plaintiff's 6/21/85 signature was not needed to transform his liability from 'to the school' into 'to a lender',[22] ignore 1984 Edition 34CFR682.401(b)(6)"(ii) [t]he borrower must personally endorse

[19] *Complaint-Exhibit-J,* p. 1 ¶5

[20] Brief, p. 2-3 at bottom/top

[21] Brief. p. 14 at bottom

[22] * * * September 7, 2001, *Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents*—without waiving general objections * * * and reserving the right to supplement production in accordance with the Fed.R.Civ.P.—for Plaintiffs Interrogatories #34-50 (* * *), interrogatory/answer for item #38 are set forth below:
Interrogatory #38. Plaintiff attended orientation modules for four calendar weeks before his 6/17/85 signature was required on the Note prerequisite to contemplation of loan approval; what shows his knowledge at the time, or within a similar 4 weeks, of the act alleged to have changed his legal standing for attending modules from direct liability to TTCI for tuition per US000007? [Motion to Strike Note: US000007 is FRCP 26(a)(1)(B)A Exhibit 6 TTCI School Enrollment Agreement signed on May 7, 1985 or subject Motion's Exhibit 2/A]
RESPONSE N0. 38: Defendant objects to this interrogatory as it seeks information regarding Plaintiff's knowledge. Defendant could not possibly assume what Plaintiffknew about his classes in 1985.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	the check and may not authorize anyone else to endorse it on his or her behalf. (iii) *Neither a lender nor a school* may obtain a borrower's power of attorney or other authorization *to endorse a check on behalf of a borrower* [emphasis added]," p. 492. Exhibit B is not authenticated/identified by process or system shown to accurately result in lender advances of "loans" if guaranteed by CSAC for applications from loan-originating schools, or in legitimate obligation of students because of "attendance records" and a *school's* receipt of funds. Thus, Exhibit B is inadmissible *for the purposes of supporting the EDUC claim and Defendant's related actions / decisions.*
FRE# 902(4)	Because it was initially disclosed by Defendant as a "from the school" and half its contents are illegible, Exhibit B is not certified/sealed as a correct copy, by the custodian of its original as a public record/official document authorized by law and actually filed in a public office. Not so self-authenticating, it is not admissible * * *.
FRE# 902(8)	Defendant has not presented a notarized acknowledgment by Plaintiff of consummation of the agreement proposed in Exhibit B, so it is not self-authenticating or admissible as such * * *
FRE# 902(9)	Plaintiff has consistently requested verification of, and * * * defense of lender default/non-consummation to, any obligation arising from the lender's alleged performance for the original agreement suggested by Exhibit B.[23] It is not self authenticating as commercial paper, to the extent of missing documents to answer lender

[23] *Complaint,* ¶¶7, l0b, 11-13, 15-20, 22a, 37, 23 & *Exhibit-H,* 24 & *Exhibit-I,* and 34 & *Exhibit-K*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	default * * * Uniform Commercial Code[24]). * * *
FRE# 1001(3)	Exhibit B is not an original or output readable by sight shown to reflect the original's data accurately, so is not admissible for Defendant.
FRE# 1001(4)	Exhibit B is not a duplicate/reproduction that accurately reproduces the original * * *.
FRE# 1003	Exhibit B is not a duplicate admissible for Defendant's purposes to same extent as its original because a genuine question is raised as to the authenticity of the original (demonstrating a loan originated by Bank of America, as Defendant's claim alleges) and in the circumstances it would be unfair to Plaintiff to admit it as such, in lieu of the original.
FRE# 1007	Failure to produce the original of Exhibit B is not accounted for by Plaintiff's testimony/ written admissions of having participated to a limited extent in enrollment/loan processing with TTCI, the loan-originating school, that would account for the existence of such agreement, without necessarily having resulted in a valid contract.
FRE# 902(11)	* * * Declarant Navarro is described as a Senior Loan Analyst in a branch of Defendant's offices "since [what date]"[25] with student loan litigation support duties not limited to 'providing back-

[24] UCC§3-305(1)(ii), as to nullification of obligation based on illegality of TTCI's receipt of funds * * * "on behalf of Plaintiff' under then-effective 1984 Edition 34CFR682.401 (b)(6)"(ii) -(iii), p. 492; UCC§3-305(1)(iii) fraud by TTCI in having given Plaintiff to understand his liability under the school enrollment contact was forgiven upon his tender of written withdrawal notice without disclosure of any alleged liability to any lender * * *

[25] Exhibit 1, p. 1 #1 at end of last sentence. Plaintiff asserts this goes to a lack of care in Mr. Navarro's filling out the general prepared portion of his "declaration," that may also be reflected in any other prepared/specific portions that follow.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**

ground information on the individual's loan history[26] and testimony to the actual case either in

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[26] "Individual's loan history," Navarro "provides background information on" under Specifics of Bruce Edward's FFELP Loan (Exhibit 1, pp. 6-11,##17-32, inclusive) is based * * *

- **solely on "records" Defendant created on or after May 25, 1993, for an alleged 6/21/85loan without any supporting documentation from any "originating lender" to answer the defense of lender default/non-consummation of a promissory note:** see *Defendant* * * *'s Initial Disclosures* Fed.R.Civ.P. 26(a)(1)(B)C...Documents from Education's Debt Management Collection System Database and the National Student Loan Data System (herein FRCP/C) [versus lack of disclosure of any lender documents/records, with a single exhibit under 26(a)(1)(B)B...Documents from California Student Aid Commission], and Exhibits C-H introduced as "evidence" to support Navarro's declaration, Exhibit 1...
  ...at p. 7 #18, Exhibit C is FRCP/C Exhibit 9
  ...at p. 7 #18, Exhibit D is falsely identified for CSAC (Calif. Student Aid Comm.) collections
  ...at p. 7 #20, Exhibit D is FRCP/C Exhibit 2
  ...at p. 8 #21, Exhibit E is FRCP/C Exhibit 1
  ...at p. 10#31, Exhibit Fis FRCP/C Exhibit 7
  ...at p. 1 1 #32, Exhibit G is FRCP/C Exhibit 6
  ...at p. 11 #32, Exhibit His FRCP/C Exhibit 5: but also...
  ...see also FOOTNOTE #17 herein above, especially second-to-last item, Admission/Answer#7. * * *
- **solely on the basis of "certification" by a State guarantor...:** addressed in discovery, by dated/mailed 9/7/01 *Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents*—without waiver of general objections * * *:
  Interrogatory #50. Does Defendant warrant that TTCI and all holders of the California Guaranteed Student Loan Program Promissory Note and Disclosure Statement signed by Plaintiff on June 17, 1985, timely complied with all terms of related written agreements and with all legal or regulatory requirements applicable to the claim against Plaintiff? RESPONSE NO. 50 TTCI was never a holder of Plaintiff's loan or promissory note. The contract between Plaintiff and TTCI is separate and distinct from his contract with the lender, First Independent Trust, or holder of his promissory note. *In accepting assignment of Plaintiff's loan, Defendant has accepted the information transmitted on the loan from the guaranty agency, including its assertion that it and the lender engaged in due diligent*

efforts to collect the defaulted loan and that it has otherwise abided by the terms of its agreement with Defendant, the Higher Education Act and its implementing regulations [emphasis added].

- **...a State guarantor whose single "record" disclosed in this case reveals it falsely certified its own required due diligence efforts for the EDUC claim:** This is revealed by comparison of applicable due diligence requirements to the data contained on the single-page, single exhibit of Defendant's FRCP 26(a)(1) (B)B disclosure (violations not necessarily limited to those described in the following): By 34 CfR 682.413(b)(1) CSAC had to comply with §682.406(a) to retain reinsur-ance. §682.406(a)(11) requires agency due diligence under §682.410(b) (6) or (7). §682.410(b)(6)(ii)(A) sets the claim payment (Exhibit C, CBOCCDATE: 04/16/87) as the beginning of required due diligence scheduling. Without any recorded activity between April 3 and June 18, 1987, CSAC violated §682.410(b)(6)(iii) and §(b)(7)(iii). With only two recorded activities between May 17 and October 13,1987, CSAC violated §682.410(b)(6)(iv) and §(b)(7)(iv). CSAC also violated §682.410(b)(6)(v) prohibition on collection activity "gaps" in excess of 60 days by recording 63 days of inactivity to 6/19/87 followed by a gap of l00 days to 9/28/87. Therefore, §682.406(a)(14) required certification for the EDUC claim relating to CSAC's own (and "the lender's"), diligent attempts to locate Plaintiffthrough use of reasonable skip-tracing techniques under §682.411(g) (which prohibits gaps over 45 days between attempts to contact individuals on the loan application) was falsely documented according to Defendant's disclosure; Defendant has never claimed to have obtained/vcrified "the lender" records and documents that are supposed to show its due diligence that was accepted under CSAC's false certification.
- **only otherwise supported by "school records" first and/or falsely produced for 4/26/01 Fed.R.Civ.P. 26(a)(I)(B)A "initial disclosure":** having more fully objected in motions to strike Exhibits 2 & 2/A-F in this matter, it is sufficient here to point out that Defendant never claimed to have records from the school contradicting Plaintiff s declarations related to attendance, withdrawal, not having endorsed any check, and not having been contacted by TTCI after the first day of class, when he wrote more formal letters, beginning in 1998, to elicit "'verification of debt" that was not forthcoming for simple written statements of dispute, as promised by various system letters from Defendant since 1993/1996 first and second initial demands. Not only did Defendant falsely attribute (and fail to correct that) copies of the loan application and promissory note were "from TTCI" in initial disclosures, but also *first produced and introduced* only "'Pell Grant checks" apparently supported by a school record card and a 5-page mixture of

handwritten/computer-formats for "attendance calculations" (so called in FRCP 26(a)(I)(B)A-Exhibit 8] that not only attribute activity to Plaintiff far beyond the first day of class he identified at least 3 years earlier as his last contact with TTCI, but also have no foundation in ED/RDS, Defendant's own Records Disposition Schedule, for existing so much beyond the normal date any of these (and all required, but somehow not also surviving) records would have been destroyed, considering Defendant had never required their production/preservation before Plaintiff filed suit. **That is to say, Navarro's 'background information' on 'the individual's loan history' related to the "Specifics of Bruce Edward's FFELP Loan" is not a loan history by an "originating lender" regularly supplemented by "other holders."**

* Plaintiff freely acknowledges participation/involvement in TTCI's enrollment/loan origination process up to the "first class, prior to the transfer of any funds" (see Complaint-Exhibit H @ 2). He did not identify "the first day of orientation" that Defendant wishes to ascribe to his statements [*but see* FRE#901(b)(9) grounds herein, at footnote for ".. .to suggest that Plaintiffs 6/21/85 signature was not needed to transform his liability from 'to the school' into 'to a lender'"], which he did not count as "class" [current regulations also exclude periods of orientation from "instructional time" ('class'), in 34CFR668.2(b) "Academic Year"(2)(iii)].

Plaintiff attended May 20-July 12 orientation modules on the strength of his enrollment contract with TTCI alone, demonstrably at least for a full month before TTCI secured his acknowledged June 17, 1985, signature on the promissory note for a loan then estimated to be disbursed on July 4, 1985 (recognizably July 8, after that holiday weekend)—one week before the first day of "class," Monday, July 15, 1985, —but, unbeknownst to him, the "loan" had been "disbursed" on 6/21/85 before TTCI's administrator told him on the first day of class, "all I needed was to submit my withdrawal in writing, which I did before leaving his office." At that time, under those circumstances, Plaintiff understood his liability to TTCI under the enrollment contact had been waived and that he had not incurred a loan liability to any lender which is at issue in this case. Where it would be unlikely that Plaintiff would have made/saved a copy of that written withdrawal from 1985 to date, that does not negate Defendant's burden to prove/verify that Plaintiff received a loan as alleged by the EDUC claim (nor can Defendant's lack of supporting documents/ records be forgiven as simply not having made/saved household records one didn't know one might need in the future.)

person or by submission of a declaration/affidavit."[27] Navarro claims familiarity with the variety of loans held/ collected by Defendant—how related information is received and records are created/maintained[28]--and access to both Defendant's electronic records/computer database records kept pursuant to relevant creation/ maintenance "at or near the time of' transaction /event—by/from "a person with knowledge of the transaction" in Defendant's regularly conducted administration of said loans,[29] and the national database on all such loans "derived from regular reports *** from the holders of the loans...based on *** regularly maintained[30]

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[27] Exhibit 1, pp. 1-2, #2(1) & (4)

[28] Exhibit 1, p. 2 #3(a)

[29] Exhibit 1, pp. 2-3, summarizing/quoting#4

[30] Navarro fails to advise the Court that, with respect to the general description of the National Student Loan Database System * * * **any and all NSLDS information specifically related to Defendant's claim under Plaintiff's name/identifies**[sic] (that is, those documents disclosed as US000086-89 under "FRCP/C Exhibit 13," Defendant's Fed.R.Civ.P. 26(a)(1)(B)C Documents from Education's Debt Management Collection System Database and the National Student Loan Data System) **were entered by Defendant and not by any other or prior "holders"** (see Defendant's * * * US000088, Data Provider Loan ID: G199309030022801, which matches both Exhibit C's "debt no: G199309030022801 date ent: 05/25/93" and Exhibit B's "claim no 1993090300228...05-25-93" sticker accepting the promissory note/claim). Contrary to Navarro's implication by general description that the prior "holders" for the EDUC claim—apparently First Independent Trust/Bank of America and CSAC—regularly contributed to this individual record, the only entries *not* showing a 198S date (besides Plaintiff's date of birth) are 9/22/00 Outstanding Principal Balance and Outstanding Interest entries (US000088), 9/16/00 Status Change entry and, ***as the entire*** *Guaranty Agency / Lender / Servicer Agent History:* Start: 05/25/1993 End: Current Code: 555 Name: FFEL assigned to ED (US000089). * * *

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	records..."[31] Navarro claims familiarity/access of Defendant/prior holder defaulted student loan records including non-electronic documents: "application and promissory note,[32] guaranty claim,[33] correspondence,[34]

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[31] Exhibit 1, p. 3 #5

[32] Exhibit B introduction through Exhibit 1, then, implies Navarro's familiarity with and access to Exhibit's A and B as nonelectronic documents suitable to have met his responsibilities/litigation support in this instance: for his expressed/implied background information on Plaintiff's "loan history," as the basis for preparing responses to discovery requests, especially responses to interrogatories and requests for production of documents in relation to this case, and for his testimony to this case by submission of his declaration/affidavit (Exhibit 1). *But see* the actual Exhibit B (and A) currently subject to this Court's determinations as to pending motions to strike them upon Defendant's entering them into evidence.

[33] Exhibit B introduction through Exhibit 1, then, implies Navarro's familiarity with and access to non-electronic documents of a guaranty claim for the alleged defaulted student loan attributed to Plaintiff. However, during discovery in this suit, Defendant advised a lack of possession of lender documents/Claim for Reimbursement, admitted to not having preserved and not currently possessing, and failed to produce any such lender claim documents, as set forth in discovery described in footnote #17 above. Also, Defendant's Fed.R.Civ.P. Rule 26(a) disclosure does not include a single document originated by an originating lender.

[34] ***With respect to correspondence between Plaintiff and an originating lender:*** see both footnote #17 above and Complaint l4b; Plaintif was not in direct contact with a lender regarding the EDUC claim at any time (even during TTCI's loan origination * * *). ***With respect to "correspondence between" Plaintiff and CSAC:*** notwithstanding the US000014 "Contact History Report" that Defendant failed to provide this Court (* * * see footnote #26 here above), Plaintiff did not *receive any* of the "contact" CSAC shows * * *: Plaintiff's Interrogatory #23 * * *: Which items, if any, in Defendant's disclosure document US000014 show Plaintiff's receipt of, or Plaintiff's response to, any mailing or telephoning-as distinguished from being a record of CSAC's initiation of mailing or telephoning that may or may not have resulted in a completed connection with Plaintiff? RESPONSE NO. 23: The Contact History Report provided

by CSAC is created and maintained by CSAC and is not a document that Defendant is familiar with nor is the copy provided very clear. Therefore, Defendant cannot definitively determine if there are any notations showing Plaintiff's receipt of or response to mailing or telephone call; CSAC may maintain another record, similar to Defendant's L102 Collector Note Pad, that shows telephone calls and mailings from Plaintiff. *[* * * Note: Defendant did not produce "another record, similar to Defendant's L102 Collector Note Pad.]*
Plaintiff's Interrogatory #24 * * *: On Defendant's disclosure US000014, do the records described as "BAD ADDRESS" dated 12/27/90, 10/07191 and 11/20/91 refer to and define the immediately previous address description of "623 E BROADWAY 1 LONG BEACH CA90802" on 9/17190? RESPONSE NO. 24: As stated in response to interrogatory number 23, this Contact History Report is CSAC's document. Defendant is not familiar with the specifics of this document and thus is unable to definitively answer this interrogatory. [* * * Answer to Plaintiff's Complaint..."14.(b), "...Deny that Plantiff did not receive notice from the guaranty agency; records from the California Student Aid Commission indicate that notices and demands for payment were sent to Plaintiff as early as February 26, 1987." * * *
Admission #4. Defendant does not have, and has not provided to Plaintiff, any copies of written communication between the [CSAC] and Plaintiff to demonstrate successful contact by the state guarantor with Plaintiff at any time. Answer: Admit that Defendant has only provided Plaintiff with a "Contact History Report" but not actually written collection letters or other written communications.
Reason to amend Answer to Admission 4: * * *
Admission #9. Prior to Plaintiff's original 1/2001 filing with this Court in this matter, Defendant did receive disputes and objections from Plaintiff that included statements related to his attendance and withdrawal at the school, his not having received the alleged loan, his not having received contact from the lender or state guarantor about a loan or default, and his not having received verification of debt in response to his 1993 verbal and written responses to an initial demand received from Defendant at his California residence. Answer: Admit.
Admission #20. Defendant did not advise Plaintiff of any investigation based on his dispute to having received the alleged loan, or make any inquiry of Plaintiff regarding details of his involvement with TTCI outside offering to accept Plaintiff's application to discharge an existing loan in response to his 1997 request for review. Answer: Object to this admission as including multiple statements. Subject to and without waiving this objection, deny first statement regarding investigation because there was not investiga-

tion; admit that Plaintiff offered the details of his involvement with TTCI, prompting Defendant's staff to send him the discharge applications and negating the need for further inquiry. * * * Admission #23. Defendant had access to the information that the state guarantor, CSAC, filed the default claim against Plaintiff, not under the last known address for Plaintiff, but under an address appearing previously to his last known address. Answer: Deny.

- * * * September 7, 2001, *Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents / Answers to Requests for Production of Documents* * * * set forth here: Request #24. A document or documents containing explanations or descriptions of column headings, data labels, codes and abbreviations that are not self-explanatory or otherwise accompanied by keys, legends, related instruc-tions or explanatory texts in Defendant's disclosure materials to Plaintiff, as data given without the means to understand it does not seem to be fair disclosure, such as for the following appearances in materials Plaintiff has received thus far:... [] c) US000014 CSAC Contact History Report: [] for all abbreviations under "CLK," "CD" (or "CO"?) and "INDX" columns; [] as well as "DESCRIPTIONS" content for the following dates: 3/19/87, 4/2/87, 6/19/87, 10/3 & 10/13/88, 3/31/89, 4/30/90, 12/27/90, 9/29 & 9/30/92 and 12/2 & 12/8/92. Response: Defendant is not in possession, custody or control of any documents that pertain to (a)-(d)... * * *[plaintiff's note]

Plaintiff's Interrogatory #4 to Defendant on June 1. 2001: What were ED's responsibilities with regard to locating and ensuring contact with Plaintiff upon having accepted the default claim against him, and where are these responsibilities published in written form? RESPONSE NO. 4: Education has no affirmative duty to locate a borrower, rather the borrower is required to notify the holder of its loan of his or her current address. See 20 U.S.C. §1078(b)(1)(P). In the interest of collecting the debt, Education will use all available means to locate a defaulted borrower. * * * [plaintiff's note] Plaintiff's Requests for Admissions #24: Defendant had possession of Plaintiff s California driver's license number, but did not locate Plaintiff through the Depart-ment of Motor Vehicles between Defendant's 5/93 acceptance of the claim against him and Plaintiff's 11/94 relocation to Colorado. Answer: Admit. Defendant uses Social Security Numbers to conduct skip traces on borrowers, not driver's license numbers. [Reaon to amend Answer to Admission 24: * * * Plaintiff's Request forAdmissions #5: With regard to keeping a record of correspondence from an individual, a notation only of having received a letter does not preserve any details of comments or requests made in that correspondence. Answer: Admit

payment records,[35] and other records that

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[35] Defendant admits only having sent copies (of quality similar to Exhibit B) of the promissory note to Plaintiff as "verification" of debt prior to this suit; and has been supremely unconcerned that Plaintiff did not receive more than one loan/default communication prior to 1996 (and that was Defendant's own in 1993)—because Defendant has "records" of CSAC and Defendant "sending" letters to Plaintiff since 1987, but doesn't even claim to have lender records of communication before that. Collection by any entity of any voluntary payment by Plaintiff—as ***first/only*** claimed in Defendant's Summary Judgment/Dismissal Brief (at p. 5 #4, referencing Exhibit 1 ¶18), "CSAC was able to collect $211.85 from Plaintiff prior to the Department of Education taking assignment of the loan on May 25, 1993"—at any time is denied by Plaintiff (who did not receive contact from CSAC at all) and Defendant's new allegation is suspicious for several reasons (one may note that Plaintiff thought the disclosure of that same amount (on Exhibit C "AMTCOLBYGA: 211.85") pertained to some fees collected by CSAC from Defendant, and one should note that there is no related "paid" date following that entry, "LASTPDGA: ___"):

- Defendant did not send evidence of such alleged $211.85 payment from Plaintiff to CSAC, as prior acknowledgment, and therefor verification, of debt in response to Plaintiff's requests for verification between 1993 and filing suit in 2001.
- Defendant has not produced a document to evidence such alleged payment from Plaintiff to CSAC.
- A CSAC "payment history" resulting from, and showing record of ,such alleged $211.85 payment by Plaintiff was not part of Defendant's Fed.R.Civ.P.Rule26(a)(1)(B)B Documents from California Student Aid Commission initial disclosures
- Such $211.85 payment from Plaintiff is not recorded anywhere on the single-page Fed.R.Civ.P.Rule 26(a)(1)(B)B Documents from California Student Aid Commission "Contact History Report dated December 31, 1993"—which only records dollar amoutns 3 times: on 10/03/88/$2,666.94, on 3/31/89/$2,666.94, and on 4/30/90 ($2,666.94)?
- Discovery in this suit includes requested admission, "21. Defendant was aware that Plaintiff has not made any voluntary payment for the alleged loan at the time of accepting the default claim against him. Answer: Admit" as asked by Plaintiff on July 27, 2001, and answered by Defendant on September 4, 2001—prior to the Brief's October 1, 2001, introducing this allegation to Plaintiff when submtiting Exhibit B * * *

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	evidence transactions between the borrower and the holders[36] of [his] loan, including [Defendant] and the originallender,[37] and, for guaranteed loans, the loan guarantor.. ."[38]

[36] The Navarro declaration, that introduces Exhibit B (et al.) under the umbrella of litigation support/experience that, by general mention, implies the existence of such supporting materials for the EDUC claim, fails to advise in Specifics of Bruce Edward's FFELP Loan, pp. 6-11, ##17-32, the lack of those required records for the EDUC claim that should evidence transactions between Plaintiff and "the holders" during the period before Defendant accepted assignment of the claim on May 25, 1993: * * *

[37] By using the singular noun, "the original lender," in this general introduction (Exhibit 1, p. 3, #6 at second-to-last line), and the most obviously coordinated identification of the bank shown on Exhibit B, "First Independent Trust," as "the lender" meant by all following references, both in the Brief ("FACTS...A. Plaintiff's Loan...#2 at last sentence and until the end of the Brief) and in Exhibit 1 (p. 7, #17 at last sentence and until the end of Exhibit 1), Exhibit B is offered to this Court as evidence supporting the **Brief's Argument "B. Plaintiff Has Failed to Show a Genuine Issue of Material Fact, and Defendant Is Therefore Entitled to Summary Judgment As a Matter of Law," without once meutioning "iender #801178"** that is the **only lender number shown** (as the second entry, 3/19/87) on CSAC's Contact History Report dated December 31, 1992 (Defendant's Fed.R.Civ.P. 26(a)(1)(B)B-Exhibit 1), **the only lender** on the NSLDS Loan History (p. 2; disclosed as US000087 under Defendant's Fed.R.Civ.P. 26(a)(1)(B)C-Exhibit 13), and the **originating lender: 801178 B of A Trustee c/o CMSC**, as well as the claiming lender (disclosed as US000071 under Defendant's Fed.R.Civ.P. 26(a)(1)(B)C-Exhibit 4) for Defendant's EDUC claim against Plaintiff—***which is a genuine issue of material fact, since the lender, First Independent Trust (see Exhibit B, for example) for which Defendant cannot answer Plaintiff's defense of default/non-consummation of the 1985 promissory note agreement that Defendant purports to be enforcing, is not the originating/claiming lender, Bank of America #801178, of Defendant's records—supported by previously undeclared "documents and information" that would not normally survive program disposition regulations, and were "produced" in 2001 as indirect "'evidence" for this suit.***

[38] Exhibit 1, p. 3 #6

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	Exhibit B/Exhibit 1 provenance/ credentials are thus falsely implied to be legitimate basis for Defense/Brief representations as to contents and meaning (but see footnotes for above ¶, directly related to the EDUC claim against Plaintiff not addressed in the Brief/Exhibit l' s self- described general information about "relevant" records); Exhibit B is not relevant/admissible under this Federal Rules of Evidence #902(11). Not only is Exhibit B (introduced into evidence through Exhibit 1) not a self-authenticating certified domestic record of regularly conducted activity (A) made at/near the time of occurrence of the matters set forth by/information of a person with knowledge of those matters, (B) kept in the course of the regularly conducted activity; and (C) maintained by the regularly conducted activity as a regular practice, but also, *Defendant failed to provide Plaintiff the prerequisite written notice of the intention to introduce it as evidence through Exhibit 1, and to make that declaration available for Plaintiffs inspection sufficiently in advance of such offering into evidence to provide fair opportunity for his challenge;* so. Exhibit B is inadmissible *as to Defendant's purposes.*
FRCP# 37(c)(1)	Defendant failed to correct initial disclosure of Exhibit B as not from TTCI, required by Fed.R.Civ.P 26(e)(1), without substantial justification, compounded by Defendant's failure to identify, to the Court, TTCI's status as lender's agent/loan-originator (interested party/fiduciary to all other participants) in the creation/signing of Exhibit B's original. Also, Defendant failed to signify, to the Court, that First Independent Trust on Exhibit B *is not the*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	lending institution that submitted the default claim as originating lender. These failures are not harmless, therefor Exhibit B/the promissory note Plaintiff signed 6/17/85 should not be permitted to be used *by Defendant* at a trial or hearing, or on a motion.
FRCP# 56(e)	Exhibit B is lacking the "parts" of that agreement demonstrating its valid consummation to meet Plaintiff s defense of lender default, or to prove any obligation to Bank of America arose from it on Plaintiff s part (including that of reporting his address to a "holder"). Thus, it is not a promissory note supporting the EDUC claim against Plaintiff suggested by being offered in the Brief through Exhibit 1—neither of which mentions First Independent Trust *is not that* originating/claiming lender. so is not admissible *for Defendant's purposes* to support such affidavits.
FRCP# 56(g)	Exhibit B was submitted in bad faith as support of Defendant's claim against Plaintiff for the originating lender, Bank of America, both by Exhibit 1 and its covering Brief, so is inadmissible *for Defendant.*

Grounds to RESTRICT corresponding initial disclosure of Defense Fed.R.Civ.P. (12)(a)(1)(B)A "Exhibit 2.. ." as Defense Presented, Without Inference between 6/17/85 and 4/28/01

Plaintiff's participation in enrollment and loan origination at TTCI is not in dispute, but the duration and the results of his involvement with TTCI are. Based on that and the foregoing Federal Rules of Evidence/Civil Procedure objection grounds and Exhibit B's condition, content and initial disclosure receipt by Plaintiff on April 28, 2001, (in similar condition, as Defendant's

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**

Fed.R.Civ.P. 26(a)(1)(B)" A. Documents from Travel and Trade Career Institute/Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985," BOTH parties share only the following knowledge:

- Plaintiff signed a promissory note with more terms and conditions that appear in Exhibit B, at TTCI on June 17, 1985;
- Exhibit B and Defendant's Fed.R.Civ.P. 26(a)(1)(B)A/Exhibit 2 are believably copies, legible on the front/illegible on the reverse, of a 1985 promissory note Plaintiff signed, but cannot be deemed evidentiary copies of any legal contract;
- Defendant sent copies similar to Exhibit B to Plaintiff from mid-1996, and at various subsequent times, as "verification" of the EDUC claim;
- the legible writing and printing on the front/first page of Exhibit B, and the CSAC endorsement to Defendant on the back/second page, reflect what Defendant provided to Plaintiff prior to his filing suit and to the Court since the initiation of this suit, and contain only a portion of a proposed agreement, but not the entire writing nor any demonstration of the lender's performance prerequisite to any obligation on Plaintiff's part for having signed the original agreement ("Note");
- Defendant's disclosures and entering into evidence of Exhibit B/Note were made with express or implied representations about the validity of the original as a contract under which Plaintiff was obligated in some way connected to Defendant's claim against him, to promote presumptions about Plaintiff, TTCI, "the lender," CSAC, and Defendant performances subsequent to its signing; and

- on June 6, 2001, by forwarded copy of internal Defense counsel letter with 2-page attachment, Plaintiff received the first/only legible copy of the entire disputed Note (subsequently submitted to this Court as Enclosure 1 (3 pp.), Plaintiff's Motion to Extend Leave to Amend Complaint and attached Brief filed on July 2, 2001)

First provision of a legible copy of subject promissory note to Plaintiff six months after this suit was filed, and failure to submit such legible copy to the Court as Exhibit B:

- contradicted all previous failures to send legible copies of the note's reverse side as "verification of debt" (particularly after express written requests: Complaint-Exhibit-K: 11/11/99-¶2,12/10/99-¶2, 12/17/99-¶3, 1/21/00-¶1, 1/28/00-¶1 & Complaint¶33);
- still failed to fulfill Plaintiff's requests for a document showing his signature of endorsement on a loan check showing his receipt of a loan or the alleged disbursement according to the terms of subject promissory note after he received Exhibit B-like copies as "verification of debt," (Complaint: ¶7, 10b, 11-13, 15-20,22, 22a, 23/Exhibit-H, 24/Exhibit-I, 34/Exhibit-K, 37); and, so, was not a valid response to this Court's permission at the May 17th Scheduling Conference in this matter, for Plaintiff to seek to extend leave to amend the Complaint contingent on his failure to receive loan check endorsement or disbursement signature disclosure related to the EDUC claim;
- was not a Fed.R.Civ.P. 26(e) required correction of 26(a)(1)(B)A Exhibit 2; and

- was not repeated for Defendant's Summary-Judgment/Dismissal Motion's Exhibit B (unless the Court's version is greatly more clear that Plaintiff's).

In the limited context as described here above, both the illegible and the legible copies of subject promissory note are admissible for Plaintiff's purposes, including, but not limited to:

- demonstrating their quality and legible contents prior to this suit, as "evidence" in this matter, and as they were actually available from Defendant;
- demonstrating inclusion in "school records" that Plaintiff first received on April 28, 2001, (as against his previously undisputed declarations[39] based on recollection of limited involvement with TTCI) "demonstrating" a more complete/authentic school record to "support" the EDUC claim than existed (see "Defendant U.S. Department of Education's Initial Disclosures, II. SECTION (a)(1)(B) DISCLOSURES:, A. Documents from Travel and Trade Career Institute:, Exhibits 1-8-first introduced only days prior to required May 3, 2001, settlement statement production by order of this Court;
- demonstrating possible impact of such false inclusion in Defendant's introduction of "school" documents, described above, on Plaintiffs good-faith settlement statement concession on May 3, 2001, that if Defendant does have evidence proving a claim Plaintiff had no record, recollection, or belief of incurring, Plaintiff should include its payment in any settlement for his cause of action-including likely impressions given the Court both by inducing such concession (albeit lacking any claim of recollection

[39] See Complaint 7, 12, 13, 15-20,22, 22a, 37,23 & Exhibit-H, 24& Exhibit-I, and 34 & Exhibit-K.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**

matching the "school records," only acknowledging that Plaintiff's memory might be faulty) of which all but a specified part carried a release for Magistrate Judge Watanabe to disclose, and by the false "authenticity" lent "disclosure from the school" to the Court, that might encourage detrimental or adverse reception of Plaintiff s side in this suit;

- demonstrating the withholding of relevant terms of Plaintiff's agreement with First Independent Trust, including (but not limited to) interpretive code and regulations; but
- not demonstrating the consummation of the promissory note according to its express terms, applicable code and regulations, and authentic supporting documentation.

Respectfully submitted in its entirety, including footnotes following, as signed and dated below:

s/*Bruce Edwards* — *10.22.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

* **NOTE: Unless otherwise indicated, all citations herein refer to CFR Revised as of July 1, 1999, or USC Revised as of January 6, 1999, upon which Plaintiff mainly relied in developing his Complaint**—before 6/6/01 receipt of the first legible copy of the reverse side of the Note (Exhibit B) on which Paragraph XII identifies interpretive code/regulations.

#69 Response (mtn. to compel) 10/30/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court District of Colorado BB
2001 OCT 30 PM 1:33 James R. Manspeaker Clerk by s/JC Dep. Clk}

Civil Number: 01-BB-36
BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

***RESPONSE TO PLAINTIFF'S "MOTION FOR PRODUCTION OF COMPLETE AND LEGIBLE DOCUMENTS"

Defendant United States Department of Education ("Defendant"), by and through United States Attorney John W. Suthers and Assistant United States Attorney Peter Krumholz, hereby responds as follows to Plaintiffs "Motion for Production of Complete and Legible Documents."

1. Plaintiff Bruce Edwards ("Plaintiff") filed a motion pursuant to Fed. R. Civ. P. 37 on October 3, 2001. Plaintiff contends in the motion that Defendant produced several documents that are incomplete under F ed. R. Civ. P. 37(a)(3), including:

a. Application for California Guaranteed Student Loan signed May 6, 1985;
b. Three receipts for Pell grant checks signed in August and October 1985;
c. Student Enrollment Agreement signed on May 7, 1985; and
d. Contact History Report dated December 31, 1992.

2. Plaintiff ignores the fact that five of the documents of which he complains are more than 16 years old. It should not be surprising that the image quality of documents pertaining to a loan signed for in May 1985 is less than crystal clear.

3. More importantly, however, all six of the documents of which Plaintiff complains originally came from

entities other than Defendant. As Plaintiff concedes, each of the documents came from the files of either the Travel and Trade Career Institute, the school for which Plaintiff took the loan, or the California Student Aid Commission, which guaranteed the loan. *See* Plaintiff's Motion, 1. Defendant duly produced those documents pertaining to Plaintiff's loan which were in its possession, custody or control. Having done so, Defendant fulfilled its obligation under Rule 26. *See* Fed. R. Civ. P. 26(a)(1)(B).

4. Finally, Plaintiff's motion is an attempt to make a substantive legal argument in the guise of a discovery motion. For example, Plaintiff contends that the Pell grant check receipts "are illegible as to the identity of the bank on which they are drawn." Plaintiff's Motion, 7. From that observation, Plaintiff concludes that the receipts are

> incomplete with respect to establishing authenticity, genuineness and relevance to the EDUC claim for such check receipts from TTCI demonstrating its acceptance of a grant purportedly made to Plaintiff after the first day ofclass that he identified, more than once since 1998 without dispute from Defendant, as the date he withdrew from enrollment without further contact with the school.

Id. In other words, from the fact that the bank name on the receipts is unclear, Plaintiff leaps to the self-serving conclusion that they cannot possibly stand for what they indicate on their face: that Plaintiff received and signed for each Pell grant check on the dates indicated on each receipt.[1] Plaintiff has made similar arguments to such

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[1] In addition, it is not true that Defendant has never disputed that he withdrew from enrollment after the first day of class. As Defendant indicated in its summary judgment papers, the school's computerized records indicate that he attended the school from May 20, 1985 until November 11, 1985. Memorandum Brief in Support of Motion for Summary Judgment at 5, 6 (filed Oct. 1, 2001).

damaging documents in other pleadings. *See, e.g.* Fed. R. Civ. P. 12(f) Motion to Strike as Inadmissible to Defendant, etc. (filed Oct. 19, 2001). A motion under Rule 37 is not the appropriate place for such arguments.

5. For the foregoing reasons, Defendant respectfully submits that Plaintiff's motion should be denied.

Dated this 30th day of October, 2001.

Respectfully Submitted,

JOHN W. SUTHERS
United States Attorney

s/*Peter Krmholz*
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

#76 Response (dispositive motion) 11/20/01

{Filed United States District Court *BB*
11-20-01 6 PM s/*KH*}

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01 BB 36

BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Plaintiff pro se hereby files this Response in Opposition to the Motion to Dismiss filed by Defendant on October 1,2001. Def. motion materials are referenced herein as: the "Motion" or "Mot.", the "Brief' or "Br.", and exhibits "Ex. [1-2]", "Ex. [A-H]", and/or "Ex. [2A-2F]." Original Complaint exhibits are referenced as "Compl-Ex-[A-M]." Each page enclosed with this Opposing Brief is consecutively numbered, as BE001...BE017 ...etc.; any reference herein to those numbered pages will include the ENCLOSURE NUMBER (i.e., BE001[ENCL] 1 or BE017[ENCL] 3).

ARGUMENT I Defendant's rejection of Plaintiff's administrative claim was neither arbitrary, capricious nor an abuse of discretion **(Br. p. 9 ¶2 at heading).**

See 34 CFR 30.33, *What procedures does the Secretary follow for IRS tax refund offsets?* which modifies §30.20-30.28 of "regulations governing the collection of student loans by administrative offset" 34 C.F.R. §§ 30.20 -30.31" (Br. p. 3, last¶).

ISSUE 1: "On September 21, 1993 [Defendant] began sending Plaintiff notices that it would refer his debt for collection by offset through TOP; the same notice was sent every year until September 5, 1997. [Navarro Decl.], ¶24" (Br. p. 7 #17). Navarro identifies Ex. D/letter type "N18" as the record of this annual mailing "to Plaintiff;" this shows a single instance of compliance with 34 CFR 30.33(b)(3)(ii) in Defendant's records:

- 09/21/93, 09/02/94, and 09/07/95 "N18" notices are recorded in the far right column as "U" (indicates a letter returned undeliverable). Plaintiff obviously did not receive these notices.
- 8/18/96 "N18" letter was sent to a 623 E Broadway (California) address. It was not returned undeliverable ("U") or received by Plaintiff because, "[f]inally, on January 17, 1996 [Defendant] obtained a different address in Colorado," (Br. p. 6 #12) where 11 system letters had been sent (Ex. D) and from where Plaintiff had already responded (Ex. E, i.e. 6/25/96).

The sole "N18" notice sent to Plaintiff in the same State as his residence and not recorded as "U" was sent on 9/5/97 (Ex. D).

ISSUE 2: "Since Plaintiff did not raise this objection until nearly three years after the September 5, 1997 notification, it was untimely...and because Plaintiff failed to respond in a timely manner, [Defendant] had properly referred his debt to Treasury for collection by TOP, and the resulting offset of his federal benefits was valid," (Br. p.13 ¶2 at beginning 2nd/ending 3rd sentence); but, Ex. E shows Plaintiff's 10/16/97 filing under 34 CFR 30.33(b)(4) & (d)(1):

Discovery/Admission: Pl. request #20, "Defendant did not advise Plaintiff of any investigation based on his dispute to having received the alleged loan, or make any inquiry of Plaintiff regarding details of his involvement with TTCI outside offering to accept Plaintiff's application to discharge an existing loan in response to his 1997 request for review;" *Def. answer,* "Object to this admission as including multiple statements. Subject to and without waiving this obection, deny first statement regarding investigation because there was no investigation; admit that Plaintiff offered the details of his involvement with TTCI, prompting Defendant's staff to send him the discharge applications and negating the need for further inquiry."

Discovery/Production: Pl. request #16, "Complete and legible copies of all hard-copy records from Defendant's Hearings Branch related to Plaintiff's 1997 request for review form submission, including initial, intermediate and final notations, findings and reports, through the ultimate rejection of the request or final determination of the review thus sought;" *Def. response,* "*See* US00015-25. Defendant does not have possession, custody or control of any other documents that satisfy this request."

1. Submitted by Ex. 1 p. 8 #21 as Brief evidence, Exhibit E "all activity on [Plaintiff's] account (except that it does not record the letters that are sent to the borrower as on the L106 Screen)" is the L102 Screen originally produced as US000015-25 (enclosed as BE001-11[ENCL] 1) for Def. Initial Disclosures list (BE012-16[ENCL] 2): Fed.R.Civ.P. 26(a)(1)(B)C "Exhibit 1: Collector Note Pad [L102]," but with 12 less half-pages and considerably less entries of Plaintiff's objections that the original disclosure (See BE00 1-11[ENCL] 1).
2. Hearings Branch record (See BE008[ENCL] 1) was: 10/16/97 filing, 10/20/97 internal request for note, 10/30/97 S.Amey receipt of request/response, and 04/03/98 receipt of [Compl-Ex-H].
3. Compl-Ex-E, *To Object in Writing to Collection of Debt,* pp. 1-2 bottom/top

- required written request for review by 65 days from Debt Statement date = due 11/9/97
- provided a Request for Review form blank[ENCL] 3 ("Form") for valid statement of objections

4. Compl-Ex-G p. 1 ¶3 confirms Pl. indicated Part II #12 (BE018[ENCL] 3) on the Form:
   - the Form did not require enclosure of any document for valid filing of selection #12
   - #12, "I believe" did not allege known fact, but personal conclusion based on Def. actions
   - #12 logically contested loan check endorsement (See Compl. #7, 10b, 11-13, 15-20
5. Compl-Ex-G p. 1 ¶2 confirms Pl. indicated Part II #10 (BE018[ENCL] 3) on the Form:
   - the Form did not require enclosure of any document for valid filing of that selection
   - Comp-Ex-E, Objections You May Raise... " p. 1 introduced lack of diploma/GED as valid
   - #10 "improperly *determined*" indicated misjudgment, not *"certified"* per Compl-Ex G.
6. Form (BE018[ENCL] 3) Part IV was a required sworn statement filed under penalty of perjury.
7. Pl. received a call after filing his review request (Compl. #22a), he believed this was to ask additional information (Form Part II end note, BE018[ENCL] 3); Defendant denies (Ans. #22a).
8. In reference to Compl-Ex G-1 & -2, Hearings Branch Sr. Loan Analyst 10/30/97 letter:
   - Introduction states it is "in response to the request for review form you returned..." (Compl-Ex-G-1, ¶1), not notice of 34 CFR 30.24(e) decision about evidence relevant to 34 CFR 30.33(b)(3)(ii) issues of existence (BE018[ENCL] 3 #12) or enforceability (ibid. #10).
   - ¶2 & 3 state insufficient information for loan discharge and department requires sworn statement of applicants; not that Form Part IV (BE018[ENCL] 3) was insufficient for review
   - ¶2 & 3 discharge criteria: "Federal Family Education Loans received after [1/1/86]"

- No applicability to unconsummated loans or to alleged 6/21/85 (Ex. C) disbursement
- p. 2 ¶1, "This notice applies only to those loans currently held by [Defendant]."
- excluded the claim against Plaintiff; Def. holds an unconsummated note, not a loan
- p. 2 ¶2, "collection efforts will continue," but not "requested review is hereby cancelled"
- Requiring an application/sworn acknowledgment of debt, as the sole reply to filing of an administrative request, contradicts the right to contest/review of existence/enforceability
- 10/30/97 letter did not require payment on 11/6/97, as for a decision, 34 CFR 30.33(f)(1)
- On subsequent failure to receive review decision, Plaintiff approached Hearings Branch directly (Compl.-Ex-H) and indirectly (Compl-Ex-I-l); Hearings Branch did not reply.

9. Def. argues 11/12/98 reply [Compl-Ex-J] to Plaintiff [Compl-Ex-I]-and 8/31/00 response [Compl-Ex-M] to Plaintiff [Compl #36]-were decisions (Br., p. 11 & 12 respectively), apparently to imply compliance with 34 CFR Part 30 for Plaintiffs 10/16/97 filing:
   - Pl. provided Compl-Ex-J (11/12/98) and Compl-Ex-M (8/31/00) for review of their texts
   - Neither letter is a 34 CFR 30.24(e) written notice of decision regarding existence or enforceability of alleged debt after a review of filed objections/relevant evidence
   - They do not require 34 CFR 30.33(f)(1) payment on 11/19/98 or 9/7/00, respectively.

The records show Plaintiff timely filed a request for review upon first receipt of an opportunity from Defendant (*see* Issue 1 above); the Hearings Branch made no investigation, was non-responsive, and failed to complete 34 CFR Part 30 requirements prior to 9/22/00 offset.

ISSUE 3: Defendant claims that decisions complied with "...Plaintiff's promissory note, the Higher Education

Act...and common law principles governing loan contracts" (Br. p. 12, end top ¶), "[t]he factual circumstances of Plaintiff s loan history and applicable legal principles and statutes," (Br. p. 13 last sentence), and "[t]he factual circumstances of Plaintiffs situation and his arguments why he did not owe the loan" (Br. p. 10, end top ¶)-compared to the effective terms, code, and regulations, and to Defendant's record at the time of 9/22/00 offset against Plaintiff.

Disc./Admission: Pl. request *#1,* "With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the alleged 6/21/85 loan disbursement showing Plaintiff s required endorsement in receipt of the alleged loan check," *Def. answer,* Admit that Defendant has not provided a copy of the endorsed loan check but has provided Plaintiff with numerous copies of his signed promissory note.

Disc./Def. Admission #6: Prior to Plaintiffs original 1/2001 filing with this Court in matter, as far as copies of actual loan documents, Defendant only provided Plaintiff with copies of the promissory note related to the account.

Disc./Admission: Pl. request #7, "Prior to Plaintiffs original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him," *Def. answer,* Admit that, prior to this suit, Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant.

Discovery/Def. Admission #9: Prior to Plaintiff's original 1/2001 filing with this Court in this matter, Defendant did receive disputes and objections from Plaintiff that included statements related to his attendance and

withdrawal at the school, his not having received the alleged loan, his not having received contact from the lender or state guarantor about a loan or default, and his not having received verification of debt in response to his 1993 verbal and written responses to an initial demand received from Defendant at his California residence.

Disc./Def. Admission #21: Defendant was aware that Plaintiff had not made any voluntary payment for the alleged loan at the time of accepting the default claim against him.

Disc./Def. Admission #26: Defendant recorded Plaintiff's objections that the promissory note had not been executed because he had not received a loan from the lender, but Defendant did not provide other loan documents or records *in response to these objections.*

- Under 42 USC 1981 and principles governing loan contracts, Plaintiff asserted legitimate defense to the alleged loan contract: the lender's express written promise was not performed and the Note was issued in anticipation of that specific consideration; i.e., U .C.C. § 3-303(b).

1. Defendant's 5/25/93 Debt No. G199309030022801 (Ex. C) is for guarantee/acceptance of the assignment of a Note (i.e., Ex. B p.2) by California Student Aid Commission (CSAC) for 4/16/87 claim payment (ORGLCMPAYDTE, Ex. C) to lender #801178 (LENDER, *ibid.*) claim of an alleged loan default on the previous day, 4/15/87 (DEFTDTE, ibid.).
   - Defendant's US000071-2 (enclosed as BE019-20)[ENCL] 4 identify #801178, B of A c/o CMSC, as both the originating and the claiming lender of Debt No G199309030022801
   - Defendant has not shown any documents of mutual intent to contract, offer, acceptance or agreed consideration between Plaintiff and Bank of America #801178
   - By ¶V Whole Loan Due (Note,[ENCL] 5 p. 2) #1, default would occur on non-payment when due

- By ¶II Date Note Becomes Due (Note,[ENCL] 5 p. 1) first payment would have been due 6 months after Plaintiff stopped carrying at least half the normal full-time academic workload
- Non-payment after Defendant's recorded, alleged withdrawal date of 12/13/85 (W/D DATE, Ex H), would have resulted in a default date of 6/13/86, not 4/15/87 (See Compl. 22a)

2. Besides the Note, Defendant possessed other relevant evidence before 9/22/00 offset:
   - By July 10, 1992 review report (enclosed as BE023-42[ENCL] 6) at Finding 27, (See BE036[ENCL] 6) Defendant advised: "...ED staff on site at Lender 'A' actually transferred loans on the CSAC system from Lender 'B' to Lender 'C.' (it must be noted that, after this process, the loans were transferred back...;" Defendant has no lender documents showing transfer of right, title and interest in the Note from First Independent Trust #828374, and there is no record of which, or how many, lenders "held" Plaintiff s First Independent Trust Note.
   - Interim report (enclosed as BE043-65[ENCL] 7) of Defendant's 1/31-2/18/94 review of CSAC, at Finding 19 (*See* BE057-58[ENCL] 7), "...it is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions...[Def.] is concerned lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or unconsummated) is not keyed in by the lender...;" merits consideration on a CSAC claim for a Note disputed as unconsummated.
   - Def. report on 1/26-2/6/98 review of CSAC (enclosed as BE066-77[ENCL] 8) at Finding 1, (See BE071-2[ENCL] 8) includes Required Actions: "(4) assurances that the Bank of America fraud loans have been properly coded"; *see also* 7/10/92 report Finding 32 at BE040-41[ENCL] 6 and 6/10/94 report Finding 3C at BE049-50[ENCL] 7), relevant because a Bank of America filed a

default claim as "originating lender" for a claim against the First Independent Trust Note.

3. Given TTCI's role as loan originator of the Note, and CSAC 06/06/85 guarantee (LNGUARDT, Ex. C)-when the partial copy of the application, Ex. A shows no lender action (*See* upper right comer, "FOR LENDER USE - LOAN IDENTIFICATION" box)—deliberations might extend to Defendant's 1/31-2/18/94 review of CSAC Finding 1 (*See* BE024[ENCL] 6), on instances of Administrative Cost Allowance "paid on a 'loan' when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school;" CSAC was to detail corrective procedures "which have been adopted" (but 7 years *later than* Ex. A).
4. Examination of the actual terms of the Note[ENCL] 5 and effective, applicable code and regulation:
   - Plaintiff, in ¶I of the Note, (See BE021[ENCL] 5) promised to pay "...to the extent [loan amount] is advanced to me...," ¶ VII #8 (BE022) indicated, "[i]n this Note the words I, me and my, mean each and all of those who signed it." The school did not cosign; Plaintiff was not agreeing to repay funds advanced to the school instead of himself. (See Compl. #14a)
   - The Note's ¶ XII, subparagraph 2 (BE022[ENCL] 5) also gave Plaintiff to understand the advance was to be to him, not to TTCI; , "*I will use all of the proceeds that I receive from this loan solely for tuition and other reasonable and authorized educational expenses, including room and board...transportation and commuting costs* [emphasis added]."
5. The Note's ¶ XII, subparagraph 1 (BE022[ENCL] 5) provides "[t]he terms of this Promissory Note will be interpreted according to the law (20 U.S.C. 1071 to 1087-2) and Federal Regulations (34 CFR Part 682)

that govern the GSLP [Guaranteed Student Loan Program];" it does not provide for interpretation by Defendant's "policy" outside the texts specifically identified.

- On June 17, 1985 the basic agreement regulations for participation in the GSLP included, by 1984 Supplement to the 1982 Edition of 34 CFR §682.401(b), pp. 491-2:

> (6) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or—if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement. (ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf. (iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower...

[and]

> (7) *School notification requirements.* For each loan insured, as a condition of insurance, the school that certified the borrower's enrollment shall be notified of the insurance, the amount of the loan, and the name of the lender. This notification may be made either—(i) By the lender or the guarantee agency informing the school of

these facts no later than 30 days after the initial disbursement of the loan; or (ii) By the lender sending all loan checks to the school for delivery to the borrower.

- The Note does not state that the lender, not CSAC, would advise TTCI of loan insurance by sending the advance to an address not appearing in the proposal, instead of by notice; there is no indication the lender or Plaintiff agreed the advance would be through TTCI.
- Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub.L. 99-272 §16012 100 STAT 340 (April 7, 1986) effective for loans to cover the cost of attendance for any period of enrollment beginning on or after January 1, 1986 [ibid., §16041(b)(1)] amended §428(b)(1)(O) of the Higher Education Act to read:

> (O) provides that funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subparagraph shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check.

- Defendant offered loan discharge (Compl-Ex-G), advised Plaintiff (Compl-Ex-J, ¶5):

> "You state that you did not receive the funds from your student loan. The funds from student loans are frequently applied by schools to enrollment expenses, such as tuition, fees, and other school charges.

> Students frequently do not directly receive the funds."

and the Brief interprets that letter,

> "...stated to him that school loans are, by law, disbursed by checks or electronic funds transfers, which must be sent to the school attended by the borrowers, and typically applied to the student's tuition and expense, and that the student may never directly receive any loan money," (Br. p. 12 top),

in reliance on the COBRA for *loans made after 1/1/86,* to interpret the Note when, in fact, TTC1 anticipated COBRA, and was specifically prohibited from endorsing Plaintiff's check.

6. "The structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school...and the borrower's repayment obligation under the loan contract." Br. p. 16, last sentence:
   - 2001 production of Ex. 2A does not exclude TTC1 waiving its terms, as Pl. described at least as early as 1998 (Compl-Ex-H, -I-1 and -K-1 & -2). TTC1's obtaining Plaintiff's June 17, 1985 Note signature shows Ex. 2A 1 payment of $3755.00 due 5-20-85 and "100% of tuition due upon acceptance to TTC1" were also not strictly enforced.
   - Besides the fact that arguments based on Ex. 2A are moot, as encompassing half a 16year-old agreement with another interested party in the loan (TTC1 was recipient school and loan originator, in control of all student and financial aid records/documents), it was not a factor of the final action subject to this review. See Disc. above on pages 5 and 6.
   - Defendant argues Plaintiff "received the loans in-kind" (Br. p. 14, 3rd line from bottom), effectively

asserting an implied-in-fact contract supersedes the Note; this must be invalid whether alleged against—or by—the U.S. An implied-in-fact contract can only exist in the absence of an express contract; *Algonac Mfg. Co.v. U.S.*, 428 F.2d 1241,1255 (Ct. Cl. 1970), supplemented by *Algonac Mfg. Co. v. U.S.*, 458 F.2d 1373 (Ct. Cl. 1972).

Def. asserts the Court's "searching and careful" inquiry here is ultimately narrow and limited to "whether the [Secretary's] decision *was based* on a consideration of the relevant factors and whether there has been a clear error of judgment [emphasis added]" Br. p. 9, middle ¶. 9/22/00 Treasury offset, as though the Note alone represented a contract/loan, was without documents from an "originating" lender (from alleged consideration through alleged default claim) to answer contest of the existence of debt; without the disqualifying CSAC "Contact History Report;" without TTCI "records", and without notice of decision to Plaintiff/opportunity for appeal, if necessary. It was not "reasonably based on the factual circumstances of Plaintiff's loan history and applicable legal principles and statutes." Br. p. 13 at end of last sentence. Review of the record shows there is no loan history; Plaintiff' s sole contact with any lender was by TTCI's origination of a loan request (application and promissory note signed at the school). Offset of Plaintiff s IRS tax refund on 9/22/00 was in arbitrary refusal to compare the First Independent Trust Note to Defendant's claim of a defaulted loan "originated" by Bank of America.

ARGUMENT B Plaintiff has failed to show a genuine issue of material fact, and Defendant is therefore entitled to summary judgment as a matter of law (Br. p. 14),

Summary judgment is appropriate only when the moving party is entitled to judgment as a matter of law and there are no disputes over material facts that may significantly affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,247-48 (1986). The moving party bears the burden of demonstrating the

absence of genuine disputes over material facts. *Celotex Corp v. Catrett,* 477 U.S. 317, 322-25 (1986). Defendant cannot show the express consideration from First Independent Trust (*or* intent to contract, offer, acceptance and consideration from Bank of America) required to support the allegation of a loan contract obliging Plaintiff. Numerous citations that "the borrower's loan contract with the lender and the enrollment contract with the school are two separate transactions..." Br. p. 17 top, and initial production of Exhibits 2/A-F in 2001 also show TTCI "records immaterial to Defendant's 2000 action for a 1987 Bank of America clim—not the sole issue in this suit. A genuine dispute concerning a material fact exits when the evidence presented would permit a reasonable jury to find in favor of the non-movant. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 248-49 (1986).

A claim is not subject to dismissal unless it appears to a certainty that no relief can be granted under any set of facts that can be proven in support of its allegations, *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2L.Ed.2d 80 (1957). "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 255 (1986); *H.F. Allen Orchards v. United States,* 749 F.2d 1571, 1574 (Fed. Cir. 1984) (notes the non-moving party shall "receive the benefit of all applicable presumptions, inferences, and intendments"). The Court must assume that the facts alleged in the Complaint are true and must resolve all reasonable inferences in favor of the Plaintiff, *Davies Precision Mach., Inc., v. United States,* 35 Fed. Cl. 651,662 (1996). A dismissal for failure to state a claim is a decision on the merits which focuses on whether the complaint contains allegations that, if proven, are sufficient to entitle a party to relief. *Gould Inc. v. United States,* 67 F.3d 925 (Fed. Cir. 1995). Introduction of, and reliance on, materials no obtained for decisions and actions against Plaintiff, but only for implying they would have been valid if Defendant included them in considerations prior to this suit, the

Motion fails to meet the standards for dismissal or summary judgment.

Discovery/Admission: Pl. request #22: "Defendant did not exercise the option to preserve school, lender and state guarantor records beyond regulatory retention expirations." *Def. Answer:* Object to this admission as containing multiple statements. Subject to and without waiving this objection, deny as to the school and state guarantor records, deny that Defendant received documents from the lender; admit as to the lender.

- *See* Discovery set forth on p. 4 & 5 above; with the exception of the Note, CSAC and TTCI "records," were not obtained prior to, or as a part of the record of, the actions/decisions under review in this instance, but were produced only in response to this suit; their admissibility is genuinely at issue, as to relevance and/or as to compliance with Federal Rules of Evidence
- The Brief only implies a loan history, "[a]s a Loan Analyst, I am also familiar with, and have access to, various other loan records...documents such as the application and promissory note, guaranty claim, correspondence, payment records, and other records that evidence transactions between the borrower and the holder...including Education and the original lender, and, for guaranteed loans, the loan guarantor, servicer, and secondary market." (Ex. 1, p. 3 #6) [emphasis added]; but all "direct" records of the alleged loan are of either pre-disbursal (i.e., Ex. A and B) or post-default-claim activity—without "originating lender" documentation.
- National Student Loan Database System "information...derived from regular reports to [Def.] from the holders of the loan, including Education itself, based on the holder's *regularly maintained records on these loans* [emphasis added]" (Ex. 1,p. 3 #5), in this instance US000086-7 "Loan Detail" and US000088-9 "Loan History" [BE078-81[ENCL] 9]—show by Data Provider LoanID (BE080[ENCL] 9) that *Defendant* made the limited 1985, 1993 and 2000 entries. The Audit Trail

Information Screen [BE082-83[ENCL] 10] for this 1993 account *begins* on 9/30/99.

ISSUE 1: "[Defendant] has set forth evidence establishing that Plaintiff owes an outstanding student loan" (Br. p. 14, last ¶), and "[t]he factual circumstances of Plaintiff's situation and his arguments why he did not owe the loan" (Br. p. 10, end top ¶) compared to Defendant's pre-suit record under review; and whether Def. Fed.R.Civ.P. 26(a)(1)(B)A & B (TTCI & CSAC) listings (See BE013[ENCL] 2) and Navarro and Rasca Declarations and Attachments thereto actually reflect the regulatory descriptions of lender, school and/or state guarantor "records" under the applicable programs, or are incomplete, unauthenticated, self-serving portions of what the record should be.

- See 34 CPR 682.414(a)(4)(ii) on lender records and *ibid.* (iii) on CSAC/Def. option to require lender records preservation; *also* 34 CFR 682.511(b)(1) on required lender-claim attachments:

Disc./Interrogatory: Pl. #25 "What evidence is or should have been available to Defendant demonstrating that the lender provided Plaintiff with a written statement of required disclosures at or prior to the beginning of the repayment period, including the scheduled date the repayment period was to begin, the due date of the first installment and the number, amount and frequency of payments?" *Def. Response:* Pursuant to 20 U.S.C. § 1078(2)(E)(ii), the lender is required to notify the borrower of the date on which the repayment period begins. Under 20 USC ¶1083, the lender is required to provide the borrower with an explanation of the terms of the loan and the terms of the repayment of the loan. See also 34 C.F.R. §682.205. Defendant is not in possession of any such documents.

Disc./Interrogatory: Pl. #26 "What evidence is or should have been available to Defendant demonstrating the lender's loan servicing, collection or due diligence activities with regard to the subject claim?" *Def. Response:* Defendant may have been able to obtain such documents from the lender or guaranty agency when he

first defaulted on the loan, however Defendant is not in possession of the lender's claim for reimbursement form which would have included its due diligence efforts.

1. The lack of lender document/record to show alleged disbursal of $2,500.00 on 06/21/85 (Ex. C, "DISB AMOUNT" and "DISBDTE") leaves open *which* originating lender: #828374/First Independent Trust from the Note or #801178/Bank of America from Defendant's claim.
2. To whom whichever originating lender made 6/21/85 disbursal is of essence in alleging a contract against the Note; "evidence" TTCI received it does not show Plaintiff s obligation.
3. See 34 CFR 682.513, p. 724, factors *affecting coverage* of a loan/judicial reviewability
   - *See also* Disc. requested admission answer #22, p. 10 above
   - lender performance, and originating lender identity, were unconfirmed at 9/22/00 offset

ISSUE 2: Defendant asserts "...on June 17, 1985, Plaintiff signed a Promissory Note...First Independent Bank was the lender and the [CSAC] guaranteed the loan. *Id. [Navarro Dec. ¶17]* "3. Plaintiff defaulted on his loan on April 15, 1987. Thereafter, the lender requested payment from CSAC, which paid the lender...then requested reimbursement on the loan from [Defendant] through the reinsurance agreement..." Br. p. 4 "FACTS" #2-3, as well as "34 C.F.R. §682.406. Even after [Defendant] pays the reinsurance claim, the guaranty agency is under an obligation to use due diligence to collect on the loan..." Br. p. 2 mid-¶l—compared to the Note Defendant provided prior to 9/22/00 offset as the basis for collection against Plaintiff, currently under review, and to the contents of the CSAC "Contact History Report" obtained since the Complaint.

- *See* Disc. admission/answer #22 on p. 10 above (Def. denial as to state guarantor on not preserving records) - *and* 34 CPR 682.414(a)(1)(ii) agency records requirements with (a)(2) minimum 5 year retention after "loan"

is paid in full or written off/Def.'s option to extend retention compared to Def. Fed.R.Civ.P. 26(a)(1)(B)B "Documents from [CSAC]" listing of one item "Contact History Report dated [12/31/92]," produced as US000014 (BE084[ENCL] 11)

1. CSAC accepted the claim of April 15, 1987 default, but that contradicted the Note's definitions, under the 12/13/85 "withdrawal" recorded (See Section I, Issue 3, Item 1 & 1st 3 "bullets" ["•"], p. 5 above), so was outside 34 CPR 682.406(a)(5) lender filing deadline.
2. Brief "FACTS" #2-3, p. 4, leap as to "loan" activity (from pre-disbursal to undocumented "default" claim) and as to the identity of "the lender" (First Independent Trust #828374 to Bank of America #801178).
3. Quoting the Brief, p. 4 #3, "[t]hereafter" the nonsensical 4/15/87 default date, "the lender requested payment from CSAC, which paid the lender" on 4/16/87 (Ex. C "ORGCLMPAYDTE"); this is so unreasonable as to indicate conscious indifference in the failure to investigate.
4. As to CSAC's requesting reimbursement "through the reinsurance agreement," Br. p. 4 #3:

Disc./Interrogatory: Pl. #50 "Does Defendant warrant that TTCI and all holders of the California Guaranteed Student Loan Program Promissory Note and Disclosure Statement signed by Plaintiff on June 17, 1985, timely complied with all terms of related written agreements and with all legal or regulatory requirements applicable to the claim against Plaintiff?" *Def. Response:* TTCI was never a holder of Plaintiff's loan or promissory note. The contract between Plaintiff and TTCI is separate and distinct from his contract with the lender, First Independent Trust, or holder of his promissory note. In accepting assignment of Plaintiff's loan, Defendant has accepted the information transmitted on the loan from the guaranty agency, including its assertion that it and the lender engaged in due diligent efforts to collect the defaulted loan and that it has otherwise abided by the terms of its agreement with Defendant, the Higher

Education Act and its implementing regulations.

Reimbursement based on CSAC's information/assertion that "the lender" and CSAC met 34 CFR 682.406 conditions of reinsurance coverage conflicts with the "Contact History Report" (See BE084[ENCL] 11), [first obtained after Compl. filing, despite Plaintiff's advisement he had not received CSAC contact about a loan or default, *See* Admission #9, p. 5 above]:

- 34 CFR 682.406(a)(11) due diligence required compliance with §682.410(b)(6) or (7):
  - See 34 CFR 682.410(b)(6)(ii), p. 689, sets claim payment date as "start" due diligence
  - "start" due diligence for CSAC's claim (Ex. C, "orgclmpaydte") was: 4/16/87
  - BE084[ENCL] 11 has two entries in the 1st 180 days (4/17/87-10/17/87)/violates requirements
  - BE084[ENCL] 11 also shows violation of 34 CFR 682.410(b)(6)(v) prohibition on 60+ day gaps
- Ex. 1 ¶18, p. 7, "CSAC continued to attempt to collect the debt from Plaintiff. Exhibit D," substitutes Defendant's Letter *History* for CSAC's Contact History Report (BE084[ENCL] 11)

Disc./Interrogatory: Pl. #23 "Which items, if any, in Defendant's disclosure document US000014 show Plaintiff's receipt of, or Plaintiffs response to, any mailing or telephoning—as distinguished from being a record of CSAC's initiation of mailing or telephoning that may or may not have resulted in a completed connection with Plaintiff?" *Def. Response:* The Contact History Report provided by CSAC is created and maintained by CSAC and is not a document that Defendant is familiar with nor is the copy provided very clear. Therefore, Defendant cannot definitively determine if there are any notations showing Plaintiff's receipt of or response to mailing or telephone call, CSAC may maintain another record, similar to Defendant's L102 Collector Note Pad, that shows telephone calls and mailings from Plaintiff.

Disc./Interrogatory: Pl. #24 "On Defendant's disclosure

US000014, do the records described as "BAD ADDRESS" dated 12/27/90, 10/07/91 and 11/20/91 refer to and define the immediately previous address description of "623 E BROADWAY 1 LONG BEACH CA90802" on 9/17/90?" *Def. Response:* As stated in response to interrogatory number 23. this Contact History Report is CSAC's document. Defendant is not familiar with the specifics of this document and thus is unable to definitively answer this interrogatory.

- Answers to interrogatories #23 & 24 set forth immediately above show not only a failure to so qualify Compl./Answer #14(b) "...records from the [CSAC] indicate that notices and demands for payment were sent to Plaintiff as early as [2/26/87]," but also a lack of justification in failing to obtain, through use of California DMV and Ex. A #18(A), a good address for Plaintiff prior to "[f]inally, on January 17, 1996," Br. p. 6 #12 after "[t]he letter [5/26/93] was returned as undeliverable, as were the two letters that [Defendant] sent on [6/27/93] and [7/18/93]. *Id.* [Navarro Dec. ¶20]." Br. p. 6 #10

ISSUE 3: "*Id.*, ¶18. After his default, the guaranty agency collected $211.85 from Plaintiff," Br. p. 15, 3rd sentence reference to "CSAC was able to collect $211.85 from Plaintiff between 1987 and 1993," Ex. 1, p. 7, #18 and argument, "...despite [CSAC] collection efforts and receipt of $211.85 toward his loan." Br. p. 17 middle ¶, compared to the record for 9/22/00 offset.

- *See* prior inconsistent statement, Disc. Def. Admission #21 set forth above on page 5.
- There is no 34 CFR 682.414(a)(1)(ii)(C) history showing any payment date/amount from or on behalf of Plaintiff; no source or date is identified for this October 1, 2001 allegation not previously made to Pl., apparently based on Ex. C "AMTCOLBYGA: 211.85 LASTPDGA: "
- The letters Defendant argues were "decisions" related to the claim, on 10/30/97—Compl-Ex-H (Br. p. 10, bottom), on 11/12/98—Compl-Ex-J (Br. p. 11-12, bottom to top), and on 8/31/00—Compl-Ex-M (Br. p. 10, top), make no

mention whatsoever of a payment from Plaintiff, as if he previously acknowledged the alleged debt, nor does Defendant's Answer to the Complaint.

ISSUE 4: "Contrary to Plaintiff's assertion, however, [Defendant] has presented records from TTCI..." Br. p. 15 mid 1st ¶, compared to Def. records for 9/22/00 Treasury offset certification.

- Plaintiff's attendance/withdrawal without receiving the alleged loan, belief that TTCI forged his name on a check, and lack of high school diploma in 1985 were raised prior to this suit (i.e., 2/21/98 Compl-Ex-H & 10/16/97-4/3/98 Ex. E) when Def. "did not have possession of any documents nor was it required to obtain possession" of TTCI documents (i.e., above Admission answers #7, p. 4 and #9, p. 5).
- Def. denies as to school on not preserving records (Disc. admission/answer #22, p. 10 above), but compare latter 6 listings for Def. Fed.R.Civ.P. 26(a)(1)(B)A, See BE013[ENCL] 2 (two initial disclosure exhibits "from [TTCI]" (Mot. Ex. A & B) are no longer attributed to TTCI) to:
  - 34 CFR 682.610(a)(1) inclusion of 34 CFR part 668 records & 682.610(b) loan records
  - 34 CFR 668.24(c)(1) school HEA program student/borrower records
  - 34 CFR 668.24(d) general school records; especially §(d)(3)(iv) on signed documents
  - 34 CFR 668.24(e)(2) FFEL eligibility/participation records 3-year retention requirement
- *See* Sec. 1, Issue 2, #5, p. 3 above, Pl.'s high school diploma (BE085[ENCL] 12) & regulations:
  - 34 CFR 682.201(a)/668.32(e)(1) diploma/equivalent required to find student eligible
  - 34 CFR 668.16 (f)(3) administrative standard: obtain/review prior educational experience
  - 34 CFR 682.609(a)(2) school liability for willful/negligent false certification
  - 34 CFR 668.14(b)(8) prohibits providing any statement to any student or certification to any

lender for loan exceeding student's eligibility; Def. ignores TTCI's violation in this instance, deferring to alleged "loan contract" based on *TTCI's receipt of loan funds:*

Disc./Interrogatory: Pl. #35 "What shows the validity of TTCI's loan origination for Plaintiff's with respect to having correctly ascertained and addressed his academic qualifications and eligibility for participation in the program, given his receipt of a high school diploma in 1999?" *Response:* Defendant objects to this interrogatory as it seeks information not relevant to this matter, nor is it likely to lead to the discovery of relevant information. Subject to and without waiving this objection, Plaintiff has admitted to applying for the student loan and signing the promissory note. Thus, he was required to verify the information on his application. Further, TTCI's alleged failure to determine Plaintiff's eligibility for the loan is separate and distinct from Plaintiff s obligation on his student loan contract.

- Pl. attended 2 community college classes (diploma not required) prior to enrolling in TTCI, which may have prompted him to acknowledge this as "in any school beyond the high school level..." at Ex. A #12; claiming school records preservation, Def. ignores loan origination for Plaintiff lacked a secondary diploma, and alleges a contract by *a disbursement TTCI received*

Disc./Interrogatory: Pl. #38 "Plaintiff attended orientation modules for four calendar weeks before his 6/17/85 signature was required on the Note prerequisite to contemplation of loan approval; what shows his knowledge at the time, or within a similar 4 weeks, of the act alleged to have changed his legal standing for attending modules from direct liability to TTCI for tuition per US000007?" *Def. Response:* Defendant objects to this interrogatory as it seeks information regarding *Plaintiff's* knowledge. Defendant could not possibly assume what Plaintiff knew about his classes in 1985.

ISSUE 5: Def. justification of prior action adverse to Plaintiff, by 2001 production of TTCI materials Ex. 2 &

2A-2F, fails to acknowledge possibility of fraud by loan originating school.

1. Despite interrogatory response #38 disclaimer, set forth above, Def. assumes Pl. meant "the first day of orientation" as "the first day of class" in describing his withdrawal from TTCI, "If Plaintiff had in fact withdrawn after the first class on May 20..." Br. p. 16, ¶1.
   - Pl. indicated attending and withdrawing after "the flrst class session" (Compl-Ex-K-2, ¶4) or "the flrst class" (Compl-Ex-H, ¶2), but he did not recall or specify a date; that he did not count the orientation period as "class" is indicated both by the phrase "would no longer be attending this school" (*ibid.*), and by having signed the Note on June 17, 1985.
   - Plaintiff s exclusion of orientation in identifying "the first day of class" is supported by regulatory definition, "the period that begins on the first day of classes...instructional time," that excludes periods of orientation, 34 CFR 668.2(b) Academic year (1) & (2)(iii).
     - withdrawal before undisputed 6/17/85 Note signing is not a reasonable inference
     - "the first day of class" not orientation: Passenger Class start on July 15, 1985 (Ex. 2E)
   - 7/15/85 was not unreasonably past Note's estimated disbursement, around 7/8/85 (7/4/85 was Thursday/holiday weekend) for Pl.'s withdrawal to have been before loan was made
2. Exhibit 2 "Explanation of Bruce Edwards School and Financial Aid Records" on 9/28/01:
   - Rasca, apparently associated with TTCI only since 2/98, swears to 1985 events there:
     - Rasca's familiarity/knowledge of TTCI procedure/documents appears less than 4 years
     - Rasca has no personal knowledge of Plaintiffs 1985 actions or his signature
     - Rasca's interpretation presumes "records" genuinely reflect Plaintiffs participation
     - Achievable without proper loan disbursal, Ex. 2 p. 2

#5 says *TTCI received* $2,459.58

3. Exhibit 2A is incomplete, illegible, excludes terms indicated on reverse side, fails to comply with regulations for school records bearing a signature, and has no bearing on loan contract performance according to Def. (Br. p. 16-7, 2nd full sentence from bottom to end of that ¶). However, the fact that the loan request had not been completed by June 17, 1985 (when TTCI obtained Plaintiff s signature on the Note), shows TTCI did release him from Ex. 2A liability for the 1 payment of $3755.00 due 5-20-85, the "100% of tuition due upon acceptance to TTCI" handwritten provision in the Itemization of the Amount Financed box, and the "Time is of the essence of this contract..." preprinted provision just below it.
4. In 2001, Defendant produces Exhibits 2B-2D as if they show express loan consideration:

Disc./Admission: Pl. request #2 "With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the original receipt from the school at the time of the alleged 6/21/85loan advance into the school's account purportedly on Plaintiff's behalf." *Def. Answer:* Object to admission as unclear and ambiguous as to definition of "original receipt from the school." Subject to and without waiving this objection, admit that Defendant has not provided Plaintiff with a receipt of loan from school because no such receipt exits.

Discovery/Admission: Pl. request #18: "Defendant did not offer Plaintiff copies of US000004-6 for verification of his signature at any time prior to Initial Disclosures in this matter, despite Defendant's experience with Plaintiffs non-payment and disputes of the existence of the alleged debt since Defendant accepted assignment of the claim in 1993." *Def. answer:* "Admit. Defendant did not obtain copies of US000004-6 until February 2, 2001.

- The partial loan application submitted as Ex. A does not indicate Plaintiff applied for, intended to apply

for, or authorized TTCI to apply for a Pell Grant, See Ex. A, #29(A)

- Determination of eligibility/ineligibility, or the fIling of an application, for a Pell Grant was not prerequisite for program loan eligibility/application until April 7, 1986, under Pub.L. 99-272 §16032(b); Ex. A does not express or imply related Pell Grant application.
- 34 CFR 668.24(e)(1) 3-year school retention requirements for Federal Pell Grant records

Discovery/Production: Pl. request #2: "A complete and legible copy of all contents of the Pell Grant application, including any separate instructions contemporaneously supplied to guide the completion of that application, with Plaintiff's 1985 signature requesting the funds that appear in the Pell Grant check receipts Defendant submitted to Plaintiff with Initial Disclosures (US000004-6)." *Def. response:* "Defendant is not in possession, custody or control of any such document. Defendant will produce under separate cover, however, the Records Disposition Schedules, Revised as of December 1998, with regard to how long the Department of Education is required to maintain Pell Grant Program Records."

Discovery/Admission: Pl. request #14: "Defendant has not provided Plaintiff to date with a copy of a Pell Grant application signed by Plaintiff in 1985." *Def. answer:* "Admit. According to ED/Records Disposition Schedule, Part 10. Item#17a (Nl-441-92-1, item 1a), Pell Grant applications were sent to Federal Record Retention Sites after the final payment was made and destroyed within 15 years of the final payment or audit, whichever was first. Thus, Defendant is not in possession of Plaintiff sPell Grant Application.

- Records Disposition Schedule (BE086-89[ENCL] 13) at #17a & b (BE088[ENCL] 13) shows Pell Grant student/institution records including payment voucher are destroyed as Def. admitted.
- Defendant recently required TTCI refund an

erroneously awarded/disbursed Federal Pell Grant, by September 12,2000 review report (BE090-108[ENCL] 14) Finding 4, p. 11 (BE100[ENCL] 14).

4[sic]. Without prior direct address to Plaintiff's 10/16/97 offset objection filing on his belief TTCI forged his name on a [loan] check, Def. interprets observations that Ex. 2B-2D are illegible as to the identify of the bank and incomplete with respect to establishing authenticity, genuineness and relevance as "Plaintiff leaps to the self-serving conclusion that they cannot possibly stand for what they indicate on their face: that Plaintiff received and signed for each Pell grant check on the dates indicated on each receipt" (but compare dates indicated on Ex. 2C & 2D with Ex. 2F "10/03/85 0.00 ANC" *absent no call*); and Defendant denies failure to previously dispute Plaintiff s withdrawal on the first day of class by pointing out this was done in the October 1, 2001 Brief. (Def. Response to Plaintiffs "Motion for Production of Complete and Legible Documents," filed 10/30/01, p. 2-3, #4 & footnote).

5. Exhibit 2E: is not self-authenticating, and shows a three week gap in the "record" after the 7/15/85 first day of class [when Plaintiff withdrew, i.e., Complaint-Ex-H]
   - "Agency Sales" score of 8/23/85 contradicts that day's "Absent No Call" entry (Ex. 2F).
   - does not show enough dated scores to meet check issuance stipulations (Ex. 2C & 2D)
   - Records no academic activity as of 1 week before last grant was verified/dated (Ex. 2D)
   - Does not show the date that Plaintiff's home phone was marked "disconnected" on it (possibly confirmed prior to TTCI's processing Pell Grant materials under Pl.'s name)
   - By Def. 1998/99 Compliance Audit (BE109-120[ENCL] 15), at Finding No. 12, p. 10 (BE117[ENCL] 15), TTCI continued improperly disbursing Title IV funds 13 years after Plaintiff withdrew.

6. Transportation Training Corp., doing business as TTCI since 5/2/67 (LA Co, CA, filing #99 1713227), offered *airline computer systems* training to Plaintiff in 1984-5. Omitting the handwritten record begun in May, 1985 (see BE121[ENCL] 16), Ex. 2F are computer printouts, but are not a self-authenticating "computerized attendance system" (Br. p. 5 #6/Ex. 2, p. 3 #9); they do not reflect the school name; the instructor name; column headings (except one page); creation-, data entry- or printing-dates; an ending total, or consistency.
   - The latest date of 11/11/85 does not match Ex. C withdrawal date of 12/13/85.

Disc./Production: Pl. request #5 "Whatever official document from which Defendant determined and recorded the withdrawal date of 12/13/85 for Plaintiff." *Def Response:* Defendant has requested the Department's Contractor at the Student Loan Processing Center in Greenville, Texas to look for a document that satisfies this request. If such a document is discovered, Defendant will produce it.

Disc./Production: Pl. request #8 "Certification of Attendance Calculations received from Defendant (US000009-13, inclusive) authenticating their 1985 creation and their 2001 production, including identifications of the person or persons responsible, at least by naming their official capacity with the school, and of the original hard copy source of the data; descriptions of any methods by which the information was verified upon initial entry and upon recent production for Defendant's Initial Disclosures; indications of whether or not the personnel involved continue to be employed by the school to date; and details of any uses the school made of this information prior to recent production for Defendant's Initial Disclosures." *Def Response:* Defendant objects to this Request to the extent that it does not seek production of documents but rather information similar to an interrogatory. Defendant will produce by separate cover, however, a copy of the fax coversheet that accompanied US00004-13. Defendant is not in

possession, custody or control of any other documents to satisfy this request.

Notwithstanding pro se ineptitude in seeking authentication for TTCI materials, said fax cover sheet (see BE122[ENCL] 17) seems a seriously inadequate foundation for the fraction of normal student records—not obtained for indicated review/response prior to 9/22/00 offset on a disputed 1993 claim—promptly produced in 2001 when required by U.S. Department of Education counsel, for self-defense. While receipt of an alleged loan advance and request/receipt of a Pell grant are not undisputed on Plaintiff' s part, TTCI has clearly established that it received student aid funds in 1985 based on having enrolled Plaintiff, without a high school diploma, and is able 16 years later to produce attendance materials in seeming support.

Review with Plaintiff of recently produced CSAC and TTCI documents (and the lack of lender documents to show First Independent Trust performance or Bank of America loan origination), between 1993 initial demand and 9/22/00 action, may have correctly resulted in referral to the Department of Justice (Compl. #21) on such indication of fraud by interested parties, rather than this cause of action arising under Defendant's standard that fraud be "definitively established through substantial evidence" (Disc./Admission answer #34, in part)—while withholding pertinent information (and certify the account for offset).

ISSUE 5[sic]: "Department of Education implementation of statutory requirements, regulations and code," Compl. #1, versus "Defendant's rejection of Plaintiff's administrative claim was neither arbitrary, capricious nor an abuse of discretion," Br. p. 9 #1. Issues include at least:

1. Withholding access to due process, administrative review/appeal (i.e., Compl. #2)
2. Failure to timely review relevant evidence/records (i.e., Compl. #25 & 27-8/Compl-Ex. J)
3. Failure to ensure/confirm program participant

compliance prior to acceptance of claim, as well as upon notice of dispute (i.e., Compl. #8, 9, 21-3, 25-6, 29-32)

4. Unauthorized disclosure (Compl. 35); possible Privacy Act violation (See Ex. D 8/18/96)

For the reasons described in this Section B above, Plaintiff asserts Defendant's demand for judgment "as a matter of law," and "because there is no genuine issue of material fact to warrant further proceedings in this matter," Br. p. 17, is not founded in the facts of this case.

ARGUMENT C Sovereign Immunity Prohibits Plaintiff from Obtaining an Injunction and an Order Ceasing Collection Activity (Br. p. 14)

Defendant notes, "Section 1082(a)(2) [20 USC] prohibits all injunctive relief, *except when the Secretary exercises powers that are clearly outside his statutory authority* [emphasis added]" Br. p. 18 end ¶1. Defendant acted (not necessarily adequately) since 1993 on a CSAC claim for reimbursement of default claim payment to Bank of America #801178 as originating lender in connection to TTCI's receipt of funds against a proposed agreement (Note) between Plaintiff and First Independent Trust #828374. Defendant's exercise of powers against Plaintiff without showing consideration for the alleged contract has been outside statutory authority, not legal enforcement of a valid debt. Legitimate exception of bar to injunctive relief may be found.

ARGUMENT D Plaintiff has failed to exhaust his administrative remedies, thus Barring His Request for Damages in Tort (Br. p. 18)

The Complaint encompasses 28 USC 1346(a)(1) recovery of wrongful collection under internal-revenue laws permitting administrative offset for valid non-tax debt (Compl. #2-4) and, under 28 USC 1346(a)(2), allegations under the Civil Rights Act of 1991 at 42 USC1981 (i.e., Compl. #3, 5, & 39); the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and the Fair Debt Collection Practices Act at 15 USC 1692 et seq. (i.e, Compl. #1, 7, 10-20, 24-34, 36-7); the Privacy Act (Compl. #25 & Ex. E. at 8/18/86**), the

Administrative Procedure Act at 5 USC 552a (*ibid.*, and Compl. #2-5, 21-23, 41); and genuine issues of pertinent law/federal regulations applicable to the alleged loan contract/claim (i.e., Compl. #3, 8-9, 14b, 21, 25-32 & 36).

** *Disc./Interrogatory: Pl. request #2:* "Why was the 8/18/96 Letter Type N18 Notice of proposed Federal offset (US000026) sent to the California street address "623 E Broadway 1...90802," when that was not Plaintiff's then-current Colorado address to which the Defendant had sent all other items since January of 1996 (US000027) and from which ED had already recorded receipt of Plaintiff s letters (US000024 & US000023)?" *Def. response no. 2:* "Defendant typically matches its own address records with IRS return address database for all non-paying defaulters approximately once a year. In this instance, perhaps the IRS address and Education address did not match, so the N18 letter was sent to the last known address on file with IRS (the 623 Broadway address."

With respect to 28 USC 1346(b), Federal Tort Claims Act exhaustion of administrative remedies:

ISSUE 1: Defendant acknowledges Plaintiff sought administrative resolutions:

- Def. "responded to his Request for Review in a decision dated October 30, 1997" (Br. p. 10, last full sentence); "discharge" was offered, but no appeal opportunity (Compl-Ex-G)
- Def.'s 11/12/98 "decision...in accordance with Plaintiffs promissory Note..." (Br. p. 12 ¶1); offered "school refund" deliberation, not review of existence of debt (Compl-Ex-J)
- Defendant's "final decision...dated [8/31/00]" (Br. p. 10 top) claimed valid certification for offset, and did not offer opportunity for appeal (Compl-Ex-M)

ISSUE 2: Access to administrative review, opportunity to contest findings, appeals:

- Defendant disclosed an LI06 Letter History Screen [BE123-4[ENCL] 18] showing first 5/26/93 demand (BEI24[ENCL] 18) was recorded as "returned as

undeliverable, as were the two letters that [Defendant]sent on June 27, 1993and July 18, 1993. [Navarro Dec. ¶19]" Br.p.6#10-11. Thus, 34 CFR682.410(b)(6)(xii) required skip-tracing by all available assistance including state DMV within 10 days' notice [Plaintiff's] address was unknown; See Ex. A #18(A).

Disc./Admission: Pl. request #24: "Defendant had possession of Plaintiffs California driver's license number, but did not locate Plaintiff through the Department of Motor Vehicles between Defendant's 5/93 acceptance of the claim against him and Plaintiff s 11/94 relocation to Colorado." *Def. Answer:* Admit. Defendant uses Social Security Numbers to conduct skip traces on borrowers, not driver's license numbers.

- Def. "continued to send notices to Plaintiff at this '623 E Broadway' address..." Br. p. 6 #11, although it is followed by 3 "BAD ADDRESS" descriptions after reappearing on 9/17/90 from first use on 9/28/87 in CSAC's "Contact History Report" (BE084[ENCL] 11), until "[f]inally on January 17, 1986[sic] [Defendant] obtained a different address in Colorado" Br. p. 6 #12.
- No lender loan document shows Plaintiff was ever required to register with Bank of America
- Denying its first demand was forwarded, received in late June of 1993, and disputed from Plaintiff s residence in California (Answer 7), Defendant has no record that Pl. received any pre-l/96 notices. Thus, "[i]t was not until 1996 that Plaintiff first asserted that he did not receive the loan and that he did not attend TTCI after the first day of class," (Brief p. 15 mid¶l) is misleading and implies Plaintiff had a duty to respond before receiving Def.'s notices

Disc./Interrogatory: Pl. #3, "With the exception of ED's 9/5/97 Letter Type N18 Notice of proposed Federal offset and accompanying materials mailed to Plaintiff s current Colorado address, specifically what communication(s) from ED to any demonstrably then-current residence of Plaintiff included notice of how to request a

review of objections, a hearing or an appeal of a decision related to ED's claim against Plaintiff? [Note: Disclosure from Defendant to date does not show that ED was in possession of Plaintiff's correct residential address in California between 7/92 and 11/94.]" *Def. response:* The following system letters include instructions about seeking review of Plaintiff s student loan balance: 442 letter sent on November 24, 1999 [US000044]; the A50 letter sent on 7/24/98 [US000036]; the E38 letter sent on April 9, 1996 [US000058]; D00 letter sent on January 17 and 20, 1996 [US000059]; D01 letter sent on November 8, 1993 [US000064] N07 letter sent on June 27, 1993, August 18, 1993, and November 29, 1993 [US000065-66]: and the N03 letter sent on May 26, 1993, July 18, 1993 and October 30, 1993 [US000067-68].

- With respect to Defendant's response to interrogatory #3 set forth immediately above, none of the *post-1995* letters sent to Plaintiff in Colorado, that he did receive (*See* specimens enclosed as BE125-156,[ENCL] 19 in post-1995 chronological appearance on BE123-124[ENCL] 18) none describe how to request a review, hearing or appeal, some offer verification for timely written dispute, copy of judgment and/or address of original creditor. The pre-1996 mailings (BE157-168[ENCL] 20) were not sent "to any demonstrably then-current residence of Plaintiff," but to "623 E Broadway" (See BE123-4[ENCL] 18) that was not Plaintiff's and that CSAC had noted as a bad address.
- Thus 9/5/97 "N18" notice to file suit in Federal district court if disagreeing with a subsequent offset (Compl-Ex-E) was sole instruction Defendant's records actually demonstrate Plaintiff received for contesting or appealing final action for the claim against him. Plaintiff did not file suit until his taxes were offset over his objections. Plaintiff consistently responded to opportunities Defendant provided (invitations to dispute for verification of debt) and did try to initiate attempts to resolve the issue with Defendant (Compl-Ex-H &

Compl. ¶36), short of responses that might be taken as acknowledgment of debt/obligation on his part (apply for "loan" discharge, Compl-Ex-G or attempt to "prove" TTCI owed a "refund," Compl-Ex-J).

ISSUE 3: Access to administrative process:

Disc/Interrogatory: Pl. #4: "What were ED's responsibilities with regard to locating and ensuring contact with Plaintiff upon having accepted the default claim against him, and where are these responsibilities published in written form?" *Def. response* Education has no affirmative duty to locate a borrower, rather the borrower is required to notify the holder of its loan of his or her current address. See 20 U.S.C. ¶1078(b)(1)(P). In the interest of collecting the debt, [Defendant] will use all available means to locate a defautled borrower.

Disc/Interrogatory: Pl. #7: "What laws, regulations, policies or procedures pertain Defendant's handling of Plaintiff's dispute(s) to ED's claim?" *Def. response:* See response to Interrogatory number 5.[*] The Administrative Procedures Act at 5 U.S.C. §701 et. seq.

[* Response to Interrogatory #5: See 34 C.F.R. §30.1 et. seq. See also 20 U.S.C. § 1095a for Defendant's responsibilities with regard to disputes pertaining to Administrative Wage Garnishment.]

1. 34 CFR 30.1 et seq., authority includes (but is not limited to) 31 USC 3711
2. Def. reports flrst and most recent credit bureau reports on 8/29/93 and 5/28/94 (BE019[ENCL] 4)
   - See above: Argument D, Issue 2, p. 22-3; Def. violated 31 USC 3711(e)(3)
   - Prior to 9/5/97 Def. failed to provide Plaintiff 31 USC 3711(e)(1)(C)(iv) notice
   - Upon/after 9/5/97 offset notice and objection filing that was left incomplete by the Hearings Branch, Def. failed to provide Plaintiff a complete explanation of the claim, opportunity to [examine for specific issues raised and] dispute agency records and information about the claim, and access to its administrative repeal[sic] (if applicable)

3 "Between October 23, 1993 and February 24, 1996 Plaintiff's account had been referred to a private collection agency. His account has been referred to a total of five collection agencies since 1993" Br. p. 6 at Footnote 1. [*See*] Def. "Referral History Screen (R111)," enclosed as BE169,[ENCL] [21] shows multiple failures to instigate litigation (where Def. would bear the burden of proving the alleged contract/claim against Plaintiff) by deadlines established in connection with contractor failure to collect, See 34 CFR 682.410(b)(7)(v).

Defendant's records show no notice of administrative review/remedy available to Plaintiff except for 9/5/97 N18 mailing, for which the Hearings Branch failed to complete the alleged opportunity, requiring Plaintiff to submit to Defendant's demands or to file suit in Federal district court. Defendant did not initiate any other process (i.e., collection agency reporting within seven years, wage garnishment proceedings, or litigation) requiring notice and opportunity for administrative review/appeal, nor did Defendant advise of or provide for other means Plaintiff could address his claim administratively.

Conclusion

The Brief supporting Defendant's Motion contains self-contradictions, misstatements, and inferences not supported in the record, such as (but not limited to) [emphases added]:

1. "Despite *his* obligation to maintain contact with the holder of the note and to inform the holder of his Current address and telephone number, Plaintiff failed to do so," (Br. p. 6 #11);
   - Def. does not show obligation arising by lender performance of Note's express promise.
2. "[Defendant] and/or its contractors made numerous telephone calls to Plaintiff..." (Br. p. 6 #13) referring to Ex. 1 ¶21 reliance on Ex. E
   - Ex. E shows numbers phoned on 12/9/93,2/8/95 (before 1996 locating Plaintiff) and on 10/30/00, but none were Plaintiff's. Plaintiff *received* a call Def.

denies (Compl./Ans. #22a) and two from Ms. Spadoni regarding her letters (12/98 & 8/00) in 7 years.

3. "The L102 records all of the telephone calls...summary of all correspondence received..." (Ex. 1 p 8 mid-#21) is meant to describe Exhibit E, but:
   - omits 12 half-pages ofL102 Screen/Collector Note Pad from Def.Initial Disclosures[ENCL] 1
   - Def. failed to record receiving any phone calls from Pl. (Compl. #7, 13, 18)
4. "...verifying that [Plaintiff] *had financed* $3,635.00" (Br. p. 5 #5)
   - misstates "*...was going to obtain financing...*" (Ex. 2, p. 2 #4)
5. "On [9/2/98] in a letter...was not disputing that [Plaintiff] *took out the loan...*" Br. p. 8 #21
   - misstates 9/2/98 record (BE008[ENCL] 1) & original (Compl-Ex-I-1, ¶2) "*requested a loan*"
6. "Department of Education regulations...would have prohibited TTCI from making any additional disbursements..." Br. p. 16 top ¶, is belied by TTCI's willful/negligent false certification of Pl. program eligibility, and non-compliance for first-time student/borrower.
7. "Despite his allegation that the school owed him a refund..." Br. p. 16 top ¶, is unfounded, *Defendant asserted* that Pl. believes school owes refund, not Plaintiff (Compl-Ex-J, ¶6).

The lack of documented connection between Plaintiff s 6/17/85 signing agreement with First Independent Trust, and Defendant's Bank of America originating lender 1987 default claim shows little to no justification for Defendant's actions/handling of Plaintiff s disputes. Introduction of indirect "evidence" in retrospective justification of 9/22/00 offset in final agency action against Plaintiff falls outside the scope of this review.

Wherefore, Plaintiff respectfully submits this Response in Opposition to Motion to Dismiss, not exceeding 25 pages in length, pursuant to Order filed 10/20/01, on the date signed below:

11-20-01 Date s/*Bruce Edwards*
Bruce Edwards, Plaintiff pro se
1001 Emporia St.
Aurora, CO 80010-3825
(303) 341-9433 (non published, home)

Encl. 1 BE1-11: L102 Note Pad {US15-25}

Page: 1 Document Name: untitled
(L102) COLLECTOR NOTE PAD ED0703
REGION: 09 ACCT OWNER: ED616 04/18/01
COLL NUM: 09:5 4
ACCT NO: S*[SSN]**
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,227.65 PROJ/ACT CA: 0.00
CA BALANCE: 5,227.65

Date	Source Code	Narrative
11/06/00	EA9999	co rr borr snt ltr of disp. C.Burke
11/07/00	EA9999	corr update corr to cltr T.Domes
01/23/01	ED9291	per Vanessa Santos/OGC/HQ req recall acct fr AG524. Bwr filed suit against the dept. JLiu
	ED9354	Branch Chief, R. Robinson, instructed me to mail CB Report to Vanessa Santos, OGC, at (202) 401-9533. This was completed this afternoon./E. Cruz
02/01/01	PIC772	MI-Same as above. No longer with AG. No Resp. A.Ash
02/09/01	ED9312	Per Vanessa Santos/OGC, acct decertified from TOP. M.URBI/09
04/18/01	ED0703	

PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109
Date: 4/18/01
Time: 01:55:16 AM

{US000015}

Page: 1 Document Name: untitled
(L102) COLLECTOR NOTE PAD ED0703
REGION: 09 ACCT OWNER: AG524 1/23/01
COLL NUM: 99999 13:41
ACCT NO: S*[SSN]**
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,178.01 PROJ/ACT CA: 1,294.50
CA BALANCE: 6,472.51

Date	Source Code	Narrative
11/07/00	**EA9999**	**corr update corr to cltr T.Domes**
*** * ***	*** * ***	*** * *[SAME DATE RANGE HAS IDENTICAL ENTRIES (in reverse order for each half-page) AS IN ADMIN. REC. FILED 5/15/02 at #12-21; *see* Pet. App. p. 418-427]**
12/09/93	**EA 789999**	**LC1 10:45 (gc) ph. res. 310-432-6398 LC1 10:46 T1 WR # LC1 10:46 3SKP skip trace accounts LC1 10:46 Account transferred via G.C. LC1 10:46 lr #457 1**

PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109
Date: 1/23/01
Time: 2:42:37 PM

{US000016} – {US000025}

Encl. 2 BE12-15: EDUC Initial Discl. list

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Number: 01-B-0036

BRUCE EDWARDS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,

Defendant.

DEFENDANT U.S DEPARTMENT OF EDUCATION'S INITIAL DISCLOSURES

The defendant, United States Department of Education, by and through Richard T. Spriggs, United States Attorney for the District of Colorado and the undersigned Assistant United States Attorney, hereby submits its initial disclosures pursuant to Fed. Rule Civ. P. 26(a)(1) as follows:

I. SECTION (a)(l)(A) DISCLOSURES:

Myron McNeil: Acting Branch Chief, U.S. Department of Education, San Francisco Service Center, Litigation Branch, 50 United Nations Plaza, San Francisco, CA 94102.

Nicolas Navarro or Janet Nori: Senior Loan Analysts, U.S. Department of Education, San Francisco Service Center, Litigation Branch, 50 United Nations Plaza, San Francisco, CA 94102.

Deloris Graham: Loan Analyst, U.S. Department of Education, San Francisco Service Center, Litigation Branch, 50 United Nations Plaza, San Francisco, CA 94102.

Owner of Travel and Trade Career Institute, 3635 Atlantic Avenue, Long Beach, CA 90807.

II. SECTION (a)(l)(B) DISCLOSURES:

A. Documents from Travel and Trade Career Institute:

Exhibit 1: Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount:

$2,500.00 to attend the Travel and Trade Career Institute (TTCI).

Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985.

Exhibit 3: Receipt for Pell Grant Check from TTCI in the amount of $975.00 signed on August 14, 1985.

Exhibit 4: Receipt for Pell Giant Check from TTCI in the amount of $656.00 signed on October 3, 1985.

Exhibit 5: Receipt for Pel1 Grant Check from TTCI in the amount of $319.00 signed on October 3, 1985

Exhibit 6: TTCI Student Enrollment Agreement signed on May 7, 1985.

Exhibit 7: TTCI Student Progress and Grade Report.

Exhibit 8: TTCI Attendance Calculations for 1984-85 (5 pages)

B. Documents from California Student Aid Commission:

Exhibit 1: Contact History Report dated December 31, 1992.

C. Documents from Education's Debt Management Collection System Database and the National Student Loan Data System

Exhibit 1: Collector Note Pad [LI02] (shows any and all oral and written correspondence between Education or its agents and Mr. Edwards regarding his account, except the collection letters as indicated on the Letter History Screen).

Exhibit 2: Letter History Screen [LI06 Screen](shows letters that Education or its contractors sent to Mr. Edwards regarding his account), explanatory sheet and specimens of letters that were sent to Mr. Edwards and samples of letters listed on Ll06 Screen.

Exhibit 3: Audit Trail Information Screens (L108 Screens).

Exhibit 4: Debt Level Information Screen [LI09] and explanatory sheet.

Exhibit 5: Rehabilitation Screen showing interest accrual (L130 Screen).

Exhibit 6: Research Account Screen [R101 screen] that shows principal, interest, and balance due and last payment date (because Education is not yet the holder of the note, there will not be any amount due on this screen).

Exhibit 7: Account Transaction Screen [R103 Screen] and Explanatory Sheet (shows voluntary payments, Federal Offsets and interest accrual on account).

Exhibit 8: Payment Detail Screens (R104 Screens) and explanatory sheet showing application of payments to fees, interest and principal.

Exhibit 9: Program Specific Screen [RI07 Screen] and Explanatory Sheet.

Exhibit 10: Account Profile Screen [R109 Screen] and Explanatory Sheet (shows current due, including original principal, accrued interest and fees).

Exhibit 11: Referral History Screen (RIll)showing when and to which private collection agencies Mr. Edwards' student loan account was referred.

Exhibit 12: Federal Offset Account Information Screen [1100] for Process Years 19902001 and Explanatory Sheet.

Exhibit 13: Printouts from NSLDS showing all Title IV loans Mr. Edwards obtained.

III. SECTION (a)(1)(C) DISCLOSURES:

Not applicable.

IV. SECTION (a)(1)(D) DISCLOSURES:

Not applicable

Respectfully submitted

RICHARD T. SPRIGGS
United States Attorney

s/*Kenneth R. Buck*
By: Kenneth R. Buck
Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202
Telephone: (303) 454-0100

Encl. 3 BE17-18 Request for Review blank

* * * *[set forth at Pet. App. 459]*

Encl. 4 BE19-20 L109 Debt Level {US71-2}

** * * [1/23/01 L109 is set forth at Pet. App. 456]*

BE020: Explanatory Sheet:

(L109) DEBT LEVEL INFO SCREEN ED0701
REGION: 04 ACCT OWNER: ED113 01/01/97
COLL NUM: 13:10

Name/SSN of debtor; ID number of debt:
ACCT NO: 999999999
DEBT LOC CODE: ED113
DEBT NO: G199304050022701 TYPE DEBT: GSL
ACCT NAME: DEBTOR, DAN PREV NAME:
Guaranty agency that assigned loan to ED:
GUARANTY AGENCY: KS 620 KANSAS
ORIGINATING LENDER:
899999 SLMA/EDUSERV TECHNOLOGIES
School attended:
ORIGINATING SCHOOL: 001944
ST MARY OF THE PLAINS COLLEGE
Lender paid on guaranty claim (SLMA=Sallie Mae):
CLAIMING LENDER AND ADDRESS:
899999 SLMA/EDUSERV TECHNOLOGIES
1050 THOMAS JEFFERSON ST NW
WASHINGTON, DC 20007-0000
DEBT AWGH FLAG: Y DEBT CLOSE REASON:
DATE DEBT ESTABLISHED: 12/01/92
CURRENT PRINCIPAL: 2,871.58
CURRENT INTEREST: 605.75 CUR[] PENALTY .00
CURRENT ADMIN: .00 CUR[] FEES: .00
Total owed ED: ED BALANCE: 3,477.33
Estimated collection costs: PROJ/ACT CA : 869.33
total payoff amount: CA BALANCE: 4,346.66
RATE: 8.00% IRCP:
CREDIT BUREAU STATUS: CB
First and most recent credit bureau reports by ED:
FIRST REPORTED: 05/28/94
LAST REPORTED: 4/20/96
FDP FLAG: N ACCT AWG FLG: Y DOJ FLAG: N
TOP STAT: 98-2

Encl. 5 BE21-2: Note, as received 6/6/01

* * * *[set forth at Pet. App. 133]*

Encl. 6 BE23-42: Review of CSAC, 7/10/92

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
50 UNITED NATIONS PLAZA – REGION IX
SAN FRANCISCO, CA 94102
OFFICE OF STUDENT FINANCIAL ASSISTANCE

July 10, 1992

Dr. Samuel M. Kipp, III
Executive Director
California Student Aid Commission
P.O. Box 510845
Sacramento, CA 94245-0845

Dear Dr. Kipp:

On April 20-28, 1992, we reviewed your Guaranteed Student Loan (GSL) tape dump procedures, documentation and processing. The enclosed report presents the findings of the review, references to Federal regulations and instructions, and actions required to correct program deficiencies. Most of the areas were addressed during our exit conference. As we stated at that time, because we were still analyzing the documentation presented during the review, and because we were waiting for further information from CSAC/EDS, a discussion on April 28 of all discrepancies was not possible.

Please review the report and respond to each finding by describing actions that have been taken. Your response should be sent within thirty (30) days of your receipt to me at the above address.

There are a number of questions regarding Tape Dump Instructions (ED Forms 1070 and 1071) that are pending further information from the Division of Program Operations and Systems and the Division of Policy and Program Development, Washington, D.C. Once I receive

responses from those Divisions, further communication on these issues may be required.

We appreciate the courtesy and cooperation of your staff during the review. If you have any questions about the review, please call me at (415) 556-1630.

Sincerely,

Linda M. Stoddard-Tsutsui

Chief

Guaranteed Student Loan Branch

* * *

Finding 1: Administrative Cost Allowance Receipt on Loans Prior to Lender Approval

A participating school may transmit an application electronically to CSAC for guarantee prior to the lender's approval. If the lender never sends the application back to EDS, the loan is reported as an undisbursed loan and ultimately canceled. In this instance, Administrative Cost Allowance is paid on a "loan" when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school.

Citation: 34 CFR 682.100(b) (1); 34 CFR 682.407

Required Action: A guarantee agency guarantees lenders against losses. Thus, the agency may not receive Administrative Cost Allowance (ACA) on a loan on which it issues a "guarantee" unless the lender has decided to make the loan. The agency may receive ACA on a loan only when the lender has notified CSAC that the loan was accepted. In response to this report, the guarantee agency must detail the procedures which have been adopted to assure that CSAC does not bill for ACA on loans before lenders accept those loans.

* * *

Finding 27: Current Holder Code: System Allows Third-party Transfers of Loans

The EDS System allows the transfer of loans between two lenders by a third party (neither the buyer nor the seller). The decision not to place an edit in the system to prevent third-party transfers of loans between lenders was stated to have been made to accommodate servicers so that loans could be transferred on behalf of their clients. However, ED staff on site at Lender "A" actually transferred loans on the CSAC system from Lender 'IB'I to Lender "C."

(It must be noted that, after this process, the loans were transferred back to the correct holder so that servicing would not be affected.)

Citation: 34 CFR 682.401(b) (10)

Required Action: Procedures that will strengthen system security and that will disallow transfers of loans between two lenders by a third-party must be enacted. A description of the new system controls, and a certification that the controls have been enacted and tested for reliability, must be submitted with the response to this report.

* * *

Finding 32: Not Reporting Uninsured Loans

CSAC and EDS stated that the agency's system had never reported uninsured loans on the tape dump. However, Program Review staff (including both Lender and School reviewers) stated that they have identified loans which have lost their guarantees permanently (were not curable) during on-site reviews. While program review staff ensure that the school and/ or the lender records are changed, there is no mechanism which records this information on the master system for use by the agency.

When questioned about the CSLFC/UES loans, CSAC stated that the trustee, Bank of America, did provide the agency with two tapes listing UES loans, but only for those loans on which CSAC had already made claim payment. The first list was loans affected by the FIX and COMFIX programs, loans which were determined ineligible. The agency then attempted to flag these loans in its system. This resulting listing, while determined to

be ineligible loans, were not reported as UI because the agency stated it did not know it should. (The second list was made up of UES serviced loans that were not touched by FIX and COMFIX programs and, thus, were potentially curable.)

Citation: ED Form 1070, Tape Dump Instructions; ED Form 1071, Tape Dump Instructions, Uninsured Loans

Required Action: The agency must begin reporting loans under the Tape Dump code UI when reinsurance has been permanently withdrawn. ED is in the process of providing a complete list of the loans involved in the FIX and COMFIX programs. Once received, the agency must (a) flag its system to prevent claim payment; (b) research its records to ensure that a claim has not already been paid (if it has, reinsurance must be rebated immediately); and (c) record these loans as UI beginning on the next tape dump submitted. In its response, the agency must confirm that its procedures have been changed to ensure compliance.

* * *

Encl. 7 BE43-65: Review of CSAC, 6/10/94

June 10, 1994 {COPY}

Mr. Michael Carona
Chairman
California Student Aid Commission
1515 "S" St., Suite 500
P.O. Box 510845
Sacramento, CA94245-0845

Dear Mr. Carona:

On January 31-February 4, February 7-11, and February 14-18, 1994, staff from this office commenced the review the data supporting the Guaranty Agency Monthly Claims and Collections Report (ED Form 1189) and the Guaranty Agency Quarterly/Annual Activity Report (ED Form 1130).

Because it was not possible to cover all items included on these two forms during the above times, we are issuing the enclosed interim report so that corrective actions may

be started in those -areas where non-compliance was noted. When the review of the items remaining is concluded, a final report will be written to include any further findings.

There are a number of questions from the review that are pending clarification from the U.S. Department of Education in Washington, D.C. You will be advised once a response to these pending issues is received.

The interim report presents the findings of the review, references to Federal regulations or instructions, and actions required to correct program deficiencies. Please review the report and respond to each finding by describing actions that have been taken. Your response should be sent within thirty (30) days of your receipt to me at the above address.

We appreciate the courtesy and cooperation of you and your staff during the review. If you have any questions, please call me at (415) 556-1630.

Sincerely,
Bonnie S. Gonzalez
Acting Chief
Guaranteed Student Loan Branch

cc: Dr. Samuel Kipp, III, Executive Director California Student Aid Commission
Nina Winkler, Director
Guarantor and Lender Oversight Staff
Lee Hardwick, Acting Director
Institutional Participation and Oversight Service

* * *

Finding 3: Supplemental Preclaims Assistance Incorrectly Calculated

* * *

C. Unanswered Questions from Review:

In 1992/93, ED returned accounts to CSAC which CSAC had purchased as claims from Bank of America as trustee for California Student Loan Finance Corporation C CLSFC)These loans were serviced by United Education Software (UES) and permanently lost reinsurance These

accounts, totaling approximately $800,000 were returned by ED and reinsurance was rebated.

1) During the review, the Agency was asked to provide documentation to verify that SPA collected on these accounts was also returned to ED. Additionally, a request was made for documentation which would verify that reinsurance and SPA had been returned to ED for any of these claims which should not have been paid and which were not subrogated to ED.
2) Reimbursement on "old" SPA (delinquency prior to 11/5/90 which led to claim payment) was the least of:
-$100, or
-2% of the outstanding principal balance of the claim, or
-actual costs

During the review, CSAC was asked to provide records which show what "actual costs" are so that the "least" may be determined.

Citation: 34 CFR 682.404(a) (2-3)
ED Form 1189 Instructions
Monthly Claims and Collections Report

Required Action: * * * C. With the response to the report, the requested documentation must be provided. After reviewing the documentation, further actions may be required.

* * *

Finding 19: Excessive Collection of Administrative Cost Allowance

It is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions. The Administrative Cost Allowance (ACA) paid to the agency by the Department is calculated by subtracting the unconsummated loans from the total loans guaranteed. Since ACA is not paid for unconsummated loans, the loan must be correctly identified as cancelled or unconsummated by the lender.

The Department is concerned that lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or

unconsummated) is not keyed in by the lender, the Agency may receive ACA to which it is not entitled.
Citation: 34 CFR 682.407
Required Action: The Agency must provide information as to the extent of this activity on the agency's complete loan portfolio. CSAC stated that these loans can be identified through use of the "Y" code in the "edit override" field. Upon receipt of documentation that will provide an accurate estimate of the extent of this issue, the Agency may be given further required action.

* * *

Encl. 8 BE66-77: Review of CSAC, 8/14/98

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
50 UNITED NATIONS PLAZA – REGION IX
SAN FRANCISCO, CA 94102
OFFICE OF STUDENT FINANCIAL ASSISTANCE

August 14, 1998

Ms. Jackie Tsang
Acting Executive Director
California Student Aid Commission
P.O. Box 419206
3300 Zinfandel Drive
Rancho Cordova, CA 95741-9026

Dear Ms. Tsang:

During the period January 26 through February 6, 1998, a U.S. Department of Education ("the Department") review team consisting of team members from this office as well as members from the New York and the Washington D.C. offices, conducted an examination of the operations, systems, organization and management of EdFund and the California Student Aid Commission (CSAC / "the agency").

The enclosed report presents the observations and findings of the review, references to Federal regulations or instructions and actions required to correct program deficiencies. Your response to this report, including a description of actions you have taken, should be sent

within 45 days of your receipt to me at the above address. In the event you wish to appeal the findings in this report, your appeal must be forwarded within 45 days to the following address:

Larry Oxendine Director
Guarantor and Lender Oversight Service
600 Independence Avenue, S. W.
(ROB-3, Room 4624)
Washington, DC 20202-5138

* * *

Sincerely,
s/[illegible]
N. Rao Palagummi
Senior Guarantor & Lender Review Specialist
Guarantor & Lender Oversight Service
Enclosure
cc: Dr. Jon D. Shaver President & CEO, EdFund
Larry Oxendine Guarantor and Lender Oversight Service

* * *

Finding 1: Incorrect listing of outstanding loans by the Financial Aid Processing System (FAPS):

It appeared that the Financial Aid Processing System listed many loans as outstanding when it is likely they are paid in full. The Agency began its lender loan reconciliation effort in approximately 1994; it is not yet completed. The Agency has a listing of 215 LIDs (approximately 500,000 loans) that are not yet 100% reconciled as part of its reconciliation effort and has further identified that many of the loans attributable to these LIDs have been outstanding for over ten years. Some examples of the lenders on this list include:

800788 Bank Of America, Trustee for CSLFC,
loans 16,753

8011 23 Bank Of America, Trustee for CSLFC,
loans 11,694

801178 Bank Of America, Trustee for CMSC
loans 11,342

828374 First Independent Trust, # loans 2,822

Additionally, the Agency has a report that compares the loans on FAPS .to the loan balances transmitted by the lenders for NSLDS purposes (Lender NSLDS Quarterly Data Compliance Report). The LIDs and their associated loans on the NSLDS report largely appear to be the LIDs on the list of lenders whose portfolios have not yet been reconciled. It appears, therefore, that not only are the loans paid-in-full greatly understated but also reported incorrectly to NSLDS. Some years ago, loans tainted by fraud.(held by Bank of America as trustee for California Student Loan Finance Corporation, serviced by United Education and Software) were to be identified; we were unable to confirm whether any of the unreconciled loans should have been marked unreinsurable.

Citation: 34 CFR682.414

Required Actions: With the response to this report, the Agency must provide:

(1) information on the actions/steps it anticipates taking to conclude the lender reconciliation to 1/1/95; (2) the procedures it will implement to ensure that the data reflected on the FAPS and the data reported to NSLDS for loans in repayment agree; (3) its plans for lender reconciliation of loans guaranteed subsequent to 1/1/95; and (4) assurances that the Bank of America fraud loans have been properly coded.

* * *

Encl. 9 BE78-81: NSLDS printouts {US86-9}

NSLDS

Menu Aid Org Report

Loan History / Overpayment History / Pell Grant / Enrollment History / Student Access Interface

Display New SSN: ___ / First Name: ___ / DOB: ___ (MM/DD/CCYY) / Retrleve

Logged on as: SHEILI D SCANIFFE from Department of Education Region 0

BRUCE EDWARDS
SSN: * * *[SSN]
DOB: * * *[DOB]
! Defaulted

Aggregate Loan Information

Loan Type	Outstanding Principal Balance (OPB)	Pending Disbursements	Total
Subsidized Loans	$2,500	N/A	$2,500
Unsubsidized Loans	N/A/	N/A	N/A
Combined Loans	$2,500	N/A	$2,500
FFEL Consolidation	N/A		N/A
Perkins	N/A		N/A

Master Promissory Notes

Direct Loans: N FFEL: N/A

Loan Summary

Sort by: --- Select --- Display Only: ---ALL Submit

Currently Sorted by LOAN DATE, No filtering

https://www.nsldsfap.ed.gov/secure/lnhist.asp 1/23/01

{US000086}

1 SF – FFEL STAFFORD SUB

Status: DU as of 09/16/2000

TRAVEL & TRADE CAREER INSTITUTE 00792600

Guaranteed Amt: $2,500

Disbursed Amt: $2,500

*OPB: $2,666

Acad.Lv: ___

Loan Date: 06/06/1985

Sep. Loan Ind: A

Loan Period: N/A – N/A

GA: 555 – DEBT COLLECTIONS

Lender: 801178 – B OF A TRUSTEE C/O CMSC

Notes: *Amount includes capitalized interest

PRIVACY ACT OF 1974 (AS AMENDED)

https://www.nsldsfap.ed.gov/secure/lnhist.asp 1/23/01

{US000087]

NSLDS

Menu Aid Org Report

Loan History / Overpayment History / Pell Grant / Enrollment History / Student Access Interface

Logged on as: SHEILI D SCANIFFE from Department of Education Region 0

BRUCE EDWARDS SSN: * * *[SSN] DOB: * * *[DOB]

Detail for Laon

Loan Type	SF- FFEL STAFFORD SUB		
Loan Period Start:	N/A	Academic Level:	N/A
Loan Period End	N/A/	Data Provider Loan ID:	G1993090300228 01
Date Entered Repayment:	N/A	Separate Loan Ind:	A
Borrowed at OPEID	00792600	Interest Rate	8.00% FIXED
Borrowed at Name	TRAVEL & TRADE CAREER INSTITUTE		

Aggregate Loan Information

	Date	Amount
Loan:	06/06/1985	$2,500
*Outstanding Principal Balance:	09/22/2000	$2,666
Outstanding Interest:	09/22/2000	$2,439

*Amount includes capitalized interest

Activity for Loan

Action	Date	Amount
Disbursements		
	06/21/1985	$2,500

.../Indet.asp?LN_TYPE_CODE=SF&LN_NUM=[***SSN]
&LN_NUM_SUP=1&LN_SEQ_N 1/23/01
{US000088]

Status Changes for Loan

Date Changed	Status
09/16/2000	DU : DEFAULTED, UNRESOLVED

Guaranty Agency/Lender/Servicer Agency History

Start	End	Code	Name
Servicer Agent			
05/25/1993	CURRENT	555	FFEL ASSIGNED TO ED

PRIVACY ACT OF 1974 (AS AMENDED)

.../Indet.asp?LN_TYPE_CODE=SF&LN_NUM=[***SSN]
&LN_NUM_SUP=1&LN_SEQ_N 1/23/01
{US000089]

Encl. 10 BE82-3: L108 (audit) {US69-70}

[Note: subsequent pages omit repeated head/foot (bold)]

Page: 1 Document Name: untitled
(L108) AUDIT TRAIL INFORMATION SCREEN
ED0703 04/18/01
COLLECTOR: 09:53
ACCT NO: * * *[SSN]
ACCT OWNER: ED616

DATE	CHANGED BY	ACTION	FIELD CHANGED
02/08/01	ED9312	IAR	IRSDEBT-ACTIVE-SW
TO:	N		
FROM:	Y FOR DEBT ID G199309030022801		
02/08/01	ED9312	IAR	IRSOFF-CURR-BAL
TO:	0.00		
FROM:	5,148.81		
02/08/01	ED9312	IAR	IRSOFF-ACTIVE-IND
TO:	I		
FROM:	A		
02/01/01	PIC537	FMA	DEBT-LOC-CODE
TO:	ED616		
FROM:	ED056		
02/01/01	PIC537	FMA	ACCT-OWNER
TO:	ED616		
FROM:	ED056		
01/23/01	ED9291	FAR	COLLECTION AGENCY RECALL
TO:	ED056		
FROM:	AG524		
08/29/00	PIC596	FMA	DEBT-LOC-CODE
TO:	ED616		
FROM:	ED611		

DATE	CHANGED BY	ACTION	FIELD CHANGED
08/29/00 TO: FROM:	PIC596 ED616 ED611	FMA	ACCT-OWNER
08/29/00 TO: FROM:	PIC596 ED611 ED616	FMA	DEBT-LOC-CODE
08/29/00 TO: FROM:	PIC596 ED611 ED616	FMA	ACCT-OWNER
			{US000069}
08/29/00 TO: FROM:	PIC596 ED616 ED056	FMA	DEBT-LOC-CODE
08/29/00 TO: FROM:	PIC596 ED616 ED056	FMA	ACCT-OWNER
01/27/00 TO: FROM:	ED4246 ED056 AG528	FAR	COLLECTION AGENCY RECALL
09/30/99 TO: FROM:	EA42257 33333 55555	CBI	ACCT-COLL-NUM
TO: FROM:			

PF13-L101 14-L102 15-L103 16-L104 17-L105 18-L106 19-L107 20 L108 21-L109 22-L1

Date: 4/18/01

Time: 10:54:12 AM

{US000070}

Encl. 11 BE84: CSAC History {US14}

* * * *[set forth at Pet. App. 452]*

Encl. 12 BE85: Edwards' 1999 diploma

Aurora Public Schools Evening High School

Aurora, Colorado

This Certifies That

Bruce Edwards

has satisfactorily completed the Course of Study prescribed for Graduation and is, therefore, entitled to receive this

Diploma

Awarded by the order of the Board of Education of the Aurora Public Schools

Given in the year of Nineteen hundred and ninety-nine

s/*Patricia J Thorpe*	s/*Barbara J Johnson*
Principal	President, Board of Education
s/*David L. Hartenbach*	s/*Patricia P. Lord*
Superintendent of Schools	Secretary, Board of Education

Encl. 13 BE86-9: Rec. Disposition Sched.

DEFENDANT, U.S. DEPARTMENT OF EDUCATION'S ANSWERS TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

Production for Request No. 2 ***[BE086]***

U. S. DEPARTMENT OF EDUCATION
RECORDS DISPOSITION SCHEDULES
{DEPARTMENT OF EDUCATION
UNITED STATES OF AMERICA}
Office of the Chief Information Officer
Information Management Group
Revised December 1998 ***[BE087]***

Part 10 – Grant and Loan Program Records (ED/RDS Item No. 17)

Description of Records	Disposal Authority
Pell Grant Program Records. The Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.	
a. Student Records. The student record series includes: application, payment voucher (report portion of student aid report (SAR), multiple data entry (CSX, USAF and CSS ACT)), correspondence and related documents.	
Disposition: Transfer to a Federal Records Center after final payment to grantee. Destroy 15 years after final payment or audit, whichever is sooner.	ED/RDS, Part 10, Item 17a (NI-441-92-1, Item la)
b. Institution Records. This file series documents the participation of an institution in the Pell Grant Program. Records include: statement of account (SOA). institutional payment summary, original payment voucher, processed payment document, recipient data exchange record, electronic payment voucher, electronic transmittals, student eligibility and validation rosters and progress reports.	
Disposition: Transfer to a Federal Records Center after final payment to grantee. Destroy 15 years after final payment or audit. whichever is sooner.	ED/RDS. Part 10, Item 17b (NI-441-92-1, Item Ib)

Description of Records	Disposal Authority
c. Pell Grant Program History. Documentation of program legislation, budget histories, policy papers, congressional correspondence impacting on program activities, organization charts, and program management studies. **Disposition**: PERMANENT. Transfer to a Federal Records Center when 3 years old. Transfer to the National Archives and Records Administration when 10 years old.	ED/RDS, Part 10, Item 17c (N1-441-92-1, Item 1d)
d. Unsuccessful Pell Grant Applications. Applications, correspondence, and other records relating to unsuccessful (rejected or withdrawn) applications. **Disposition**: Transfer to a Federal Records Center 120 days after rejection or withdrawal. Destroy 3 years after date of rejection.	ED/RDS, Part 10, Item 17d (N 1-441-92-1, Item If)
e. Pell Grant Administration Records. Correspondence and/or subject files relating to routine operations and daily activities in administration of the Pell Grant Program. **Disposition**: Destroy when 2 years old.	ED/RDS, Part 10, Item 17e (N1-441-92-1, Item 19)

Encl. 14 BE90-108: Review of TTCI, 9/12/00

UNITED STATES DEPARTMENT OF EDUCATION
Office Of Student Financial Assistance Programs
Institutional Participation and Oversight Service
Southwest Case Management Division
—San Francisco Team -
50 United Nations Plaza, Room 266, S.F., CA 94102
(415) 556-4295 FILE COPY
SEP 12 2000

Mr. Rodger J. Erickson, President
Travel and Trade Career Institute
3635 Atlantic Avenue
Long Beach, CA 90807

USPS FIRST CLASS-CERTIFIED MAIL
RETURN RECEIPT REQUESTED P 241 202 188

RE PROGRAM REVIEW REPORT
PRCN: #200040917745

Dear Mr. Erickson:

On July 17, 2000 through July 21, 2000 a program review was conducted of the Title IV Federal Student Financial Assistance (SFA) programs administered at Travel and Trade Career Institute's main campus, located at 3635 Atlantic Avenue, Long Beach, CA 90807.

This report contains findings of noncompliance regarding the institution's administration of various Title IV SFA programs. Descriptions of these findings include reference to the applicable Federal regulations and specify the action required by the institution in order for it to comply with the involved regulations and statutes.

Please review and respond to the accompanying report as required, indicating the corrective actions taken by the institution. The institution must submit its response to the undersigned Senior Institutional Review Specialist within forty-five (45) days of the institution's receipt of this letter and report. Please use the Program Review Control Number (PRCN) noted above in order to facilitate our identification of the institution's program review response.

If you have any questions concerning the report or its requirements, please call me at (415) 556-4104.

Sincerely:

s/*Steve Hansen*

Steve Hansen

Senior Institutional Review Specialist

San Francisco Case Team

Case Management and Oversight Schools Channel

Cc: Marcia Clark, San Francisco Co-Team Leader

Laura Harcum, Washington D.C. Co-Team Leader

James S. Castress, Area Case Director

Edfund

ACCSCT

* * *

Page 11

FINDING #4: INELIGIBLE STUDENT PRIOR BACCALAURATE DEGREE

Travel and Trade Career Institute erroneously awarded and disbursed a Federal Pell Grant to **student #6,** whose admissions records indicate that she received a Bachelor of Science Degree in Commerce from Arellano University, located in Manila, Philippines.

An institution that fails to establish a student's eligibility for Title IV, HEA funds deprives other needy students of funds and creates a financial burden for the U.S. Department of Education.

REFERENCE: 34 CFR 690.6 (a), ***Code of Federal Regulations,*** revised as of07/01/99

REQUIREMENT: A student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

The institution must refund the Federal Pell Grant of $775 to the U.S. Department of Education since this was for the 1997-98 award year. Instructions will payment will[sic] be provided in the final program review determination letter (FPRDL).

* * *

Encl. 15 BE109-20: Audit of TTCI, 6/13/00

UNITED STATES DEPARTMENT OF EDUCATION
Office Of Student Financial Assistance Programs
Institutional Participation and Oversight Service
Southwest Case Management Division
—San Francisco Team
50 United Nations Plaza, Room 266, S.F., CA 94102
(415) 556-4295

JUN 13 2000

Arlene Almaleh, Director
Travel and Trade Career Institute
3635 Atlantic Avenue
Long Beach, CA 90807-3417

CERTIFIED MAIL P 241 202 111
RETURN RECEIPT REQUESTED

RE: Final Audit Determination Letter (FADL)
1998/99 Compliance Audit -ACN: 09 1999-05559
(7/1/98 through 6/30/99)
OPEID# 00792600

Dear Ms. Almaleh:

This letter advises you of the Department of Education's final audit determination concerning the audit report of Travel and Trade Career Institute's administration of the Title IV Student Financial Assistance Programs. This report, prepared by Barry Glasser & Company, Certified Public Accountants, covers the period July 1, 1998 through June 30, 1999. We have reviewed the institution's corrective action plan provided with the audit report. We have also reviewed the additional information submitted by the institution and Barry Glasser & Company, as requested in our Preliminary Audit Determination Letter dated February 28, 2000.

Enclosed is our final audit determination for this audit.

* * *

Sincerely,

Marcia A. Clark
San Francisco Co-Team Leader
Southwest Case Management Division
Case Management & Oversight
Student Financial Assistance

Enclosures

***

AUDIT FINDING NO. 12:
SATISFACTORY ACADEMIC PROGRESS STANDARDS NOT MET

The audit report revealed in a sample of 12 student files that in 8 of the files, the students were not making satisfactory academic progress (SAP) per the institution's SAP policy. The students received Title IV funds while SAP was not maintained.

FINAL AUDIT DETERMINATION FOR FINDING NO. 12:

34 CFR 668.7(c) and 668.14(e), General Provisions, 34 CFR 668.16(e) and 668.23(h), General Provisions, states that Federal regulations require an institution to consistently apply its SAP standards to all students within categories of students (i.e., full-time, part-time, undergraduate and graduate students, and educational programs established by the institution). The school must determine, prior to disbursing Title IV funds, if a student is meeting its satisfactory academic progress (SAP) standards.

By not adequately or consistently monitoring SAP standards for its students, the institution may be disbursing Title IV aid to ineligible students; this deprives other eligible students of aid and creates increased expense for the U.S. Department of Education.

In making this final determination, the case team has considered the independent auditor's report and the institution's corrective action plan (provided as an attachment to the audit report). We have also reviewed the additional

information submitted by the institution and Barry Glasser & Company, as requested in our Preliminary Audit Determination Letter dated February 28, 2000. The institution was required to identify all students enrolled for the period of July 1, 1998 through June 30, 1999 who received Title IV funds and determine if it properly implemented its SAP policy. It was then to identify the students who received disbursement of Title IV funds while not maintaining SAP. The improperly disbursed Title IV funds will be an institutional liability. The liabilities identified from the audit report and the file review are as follows:

	[Pell Grants]	[FSEOG Grants]	[Subsidized FFEL Loans]	[Unsubsidized FFEL Loans]
#53 AR			$1,272.00	$1,938.00
#21 FR			$392.35	
#101 FR	$1,500.00	$100.00	$l,447.70	
#114 FR			$914.46	
#194 FR			S1,606.56	
#291 FR			$1,606.56	
#308 FR	$1,500.00	S100.00	$1,240.31	
#409 FR	$1,350.00	$100.00	$3207.14	
#420 FR			$1,220.28	
Totals	**$4,350.00**	**$300.00**	**$12,907.36**	**$1,938.00**

Grand Total $19,495.36

AR=Audit Report FR=File Review ***

Encl. 16 BE121: TTCI "attendance" {US8}

ATTENDANCE CALCULATION 1984-85

NAME OF STUDENT EDWARD[sic], BRUCE

* * *[(1984) September-(1985) May 05 weekdays, blank]

May

started 5/20/85

06	07	08	09	10	13	14	15	16	17
4.75	*4.75*	*4.75*	*4.75*	*4.75*	*H*	*4.75*	*4.75*	*4.75*	*4.75*
20	21	22	23	24	27	28	29	30	31

* * *[(1985) June- September weekdays, blank]

Month	Total
May	*47.50*
June	*88.75*
July	*136.25*

{US000009}

Encl. 17 BE122: TTCI production cover

3635 Atlantic Avenue
Long Beach, California 90807
Phone: (562) 426-8841 Fax (562) 988-0464

Travel and Trade Career Institute

FAX

To: VANESSA (D.O.E.) **From:** GLENDA RASCA

Fax: 202-401-5391 **Date:** 2/2/01

Phone: **Pages:** 11 (including cover sheet)

Re: BRUCE EDWARDS **cc:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment**
☐ **Please Reply** ☐ **Please Recycle**

Here is the information we discussed this morning. If I can be of further assistance please give me a call.

Encl. 18 BE123-4: L106 (letters) {US26-7}

Page: 1 Document Name: untitled
(L106) LETTER HISTORY SCREEN ED0703
REGION: 09 ACCT OWNER: ED616 04/18/01
COLL NUM: 09:52
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,227.65 PROJ/ACT CA: 0.00
CA BALANCE: 5,227.65

Letter Sent Dat	Reques ter Code	Letter Type	Street		Zip	U
02/12/01	GDIRS 610	U19	1001 EMPORIA ST		80010	

* * **[SAME DATE RANGE HAS IDENTICAL ENTRIES (in reverse order) AS IN ADMIN. REC. FILED 5/15/02 at #7-10; see Pet. App. p. 414-418]*

05/26/93	GDNE W510	N03	*623 BROADWAY 1	E	90802	U

PF13-L101 14-L102 15-L103 16-L104 17-L10S 1B-L106 19-L107 20-L108 21-L109 22-L1
Date: 4/18/01 Time: 10:53:30 AM

{US000026}-{US000027}

Encl. 19 BE125-56: 1995+ dunning samples

***

Text of Sample "442" Dunning

* * *[Payment stub/date]

This letter is being sent to you at the request of Van Ru Credit Corporation. The U.S. Department Of Education has assigned your account to this agency for immediate collection action.

If you do not dispute the validity of this debt, or any portion of this debt, in writing, within 30 days after receipt of this notice, we will assume it is valid.

If you do dispute this debt, in writing, within the 30 day period, we will obtain verification of the debt or a

copy of a judgment and will mail a copy of such verification or judgment to you.

If you request the name and address of the original creditor, if different from the current creditor, van ru credit corporation will provide you with the name and address of the original creditor.

Van Ru Credit Corporation office hours are from 8am to 9pm (cst), Monday through Thursday, 8am to 5pm on Friday and 8am to 12 noon on Saturday. You may write to us at the address listed below or call us at the telephone number provided:

* * *[Address and disclaimer/licensing information]

{US000044} / *(BE141)*

Text of Sample "A50" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

The U.S. Department Of Education has, effective with this notice, assigned your account to the following agency for immediate collection action: xxx

In addition to principal, interest and administrative fees, your balance now includes collection costs, up to 25% of principal and interest.

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you do not dispute the validity of this debt, or any portion thereof, in writing, within 30 days after receipt of this notice, we will assume it is valid. If you dispute the validity of this debt, in writing, within the 30 day period, we will obtain verification of this debt or a copy of a judgment and will mail a copy to you. At your request, in writing, within the 30 day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Federal law prohibits unfair collection practices. Formal complaints against this agency may be lodged with:

U.S. Department of Education Atlanta Service Center
– Chief, Contract Services Branch
Atlanta Federal Center Tower
61 Forsyth St., SW, Rm 19t89

Atlanta, Georgia 30303

The agency responsible for handling your account is: xxx * * *[address/phone placeholders]

{US000036} / *(BE138)*

Text of Sample "E38" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

The U.S. Department of Education has, effective with this notice, placed your account with the private collection agency identified herein. You are legally responsible to repay this debt, including any accrued interest, penalty charges, fees and from 25% to as much as 42.84% in collection costs. This additional cost covers expenses incurred in having a private agency collect this account.

You must contact dcs to arrange for the repayment of your account, or this department will be forced to take additional steps to collect this debt. DCS' office hours are 11:00 a.m. to 8:00 p.m. Pacific Standard time. Federal law requires that we inform you any information obtained from you may be used as a basis to enforce collection of this debt.

If you do not dispute the validity of this debt, or any portion of this debt, in wr1ting, within 30 days after receipt, we will assume it is valid. If you do dispute the validity of this debt, in writing, within the 30 day period, we will obtain verification of the debt or a copy of a judgment and will mail a copy of such to you. At your request, in writing, within the 30 day period, we will provide you with the name and address of the original creditor, if different from the current one. Federal law also protects you from unfair debt collection practices. Formal complaints against the private agency collecting this account may be lodged with: the U.S. Department of Education, Chief, Contract Services Branch, San Francisco Service Center, 50 United Nations Plaza, Rm 242, San Francisco, California 94102.

The office responsible for handling your account is: * * *[address/phone placeholders]

{US000058} / *(BE126)*

Text of Sample "D00" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

This notice regarding your student loan account is from xxx... the Department of Education has placed this firm for immediate collection action.

Your failure to respond to this notification by communicating your intent, or by sending the balance due, may leave us no other alternative but to review your account for possible referral to the U.S. Department of Justice for suit.

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you do not dispute the validity of this debt, or any portion of this debt, in writing, within 30 days after receipt, we will assume it is valid. If you do dispute the validity of this debt, in writing, within the 30 day period, we will obtain verification of the debt or a copy of a judgment and will mail a copy of such to you.

Write to: * * *[address placeholders]

Or call between the hours of 8:00am-9:00pm central time * * *[phone placeholders]

Federal law protects you from unfair debt collection practices. Complaints may be lodged with: the U.S. Department of Education, Chief, Contract Services Branch, P.O. Box 2258, Atlanta, Georgia 30370-2258. * * *[Licensing information]

{US000059} / *(BE157)*

Encl. 20 BE157-68: pre-1996 samples

Text of Sample "N03" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

The U.S. Department of Education (ED) now holds the defaulted student loan from xxx... to attend xxx... for which you are responsible. The entire outstanding balance on this loan is now due. You will also be liable for the costs of collecting this loan. These charges can add substantially to the amount needed to satisfy your debt.

ED wants you to know that paying your debt by a mutually agreeable installment plan may make your loan(s) eligible for loan "rehabilitation" or payoff through a consolidation loan, which will remove your loan(s) from default status, may improve your credit rating, and will make you eligible for additional title iv student finnancial assistance.

To remedy your default status, you can pay the total amount due immediately (follow the instructi0ns on the above coupon), or contact an ed customer service representative to enter into an acceptable repayment agreement or to find out additional information on the benlefits of ed's loan "rehabilitation" and "consolidation" programs. Our toll-free customer service number is: (999) 999-9999

All of ED's repayment opportunities are designed to assist you in remedying your defaulted student loan status.

Failure on your part to pay your debt may result in ed moving against you with one or all of the following collection measures:

ED will report your default status on this loan to national credit reporting agencies; this may hurt your ability to obtain further credit.

ED can refer your debt to a collection agency, and charge you the costs incurred by ed in having that agency collect this debt. These costs are currently up to 25% of the principal and interest owed on your loan. The department applies any payments you make first to these costs, and then to your loan balance. This will increase the cost to you of paying off your loan by up to 25%.

ED can notify your employer to initiate garnishment of your wages;

ED can refer your debt to the U.S. Attorney for litigation;

ED can perform computer matches with other federal agencies to determine if you are a government employee or recipient of other federal aid for purposes of offsetting all or a percentage of these funds;

ED can refer your debt to the Department of Treasury for offset of federal funds due you (including your federal income tax refund).

To avoid ed reporting this loan to credit bureaus as in default, you have 65 days from the date of this letter to pay this loan in full, make satisfactory arrangements to repay and actually make the first payment under this arrangement, or to request an administrative review.

To request an administrative review of this debt, an explanation of this debt, copies of documents, or an opportunity to dispute this debt, you must send a written request to the following address:(note:ed may use a contractor to provide information, arrange repayment terms, and process payments.) * * *[address placeholder]

Sincerely, s/*[illegible]*

Director, Washington Service Center

{US000067}-{US000068} / *(BE167-8)*

* * *[other samples of letters to bad address in California]

Encl. 21 BE169: R111 (referrals) {US83}

Page: 1 Document Name: untitled

(R111) REFERRAL HISTORY SCREEN ED0703

REGION: 09 LOCATION: ED616 04/18/01 09:56

ACCT NO: S***[SSN]

ACCT NAME: EDWARDS, BRUCE

PREVIOUS NAME: PAGE 1 OF 1

COLLECTION AGENCY HISTORY

Agency	Assign-Date	Opening-Balance	Return-Reason	Return-Date	Agcy-Receipts
AT524	09/16/00	4,013.31	REQ	01/23/01	
AT528	10/24/99	3,778.99	REQ	01/27/00	
AT522	07/20/98	3,778.99	AT1	10/02/99	
RT480	03/16/96	3,778.99	INA	03/21/98	
RT478	10/23/93	3,778.99	REQ	02/24/96	

PE13-R101 14-4102 15-R103 16-R104 17-R105 * * *

Date: 4/18/01 Time: 10:56:55 AM **{US000083} / *(BE169)***

#83 Objections (to Trial Exhibits) 1/25/02

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB JAN 25 2002 James R. Manspeaker Clerk s/[illegible] Dep Clerk}

Civil Action No. 01-BB-36
Bruce Edwards,
PLAINTIFF

v.

U.S. Department of Education,
DEFENDANT

Plaintiff's List of Fed.R.Civ.P. 26(a)(3)(ii) Objections with Grounds on the Admissibility of Defendant's Trial Exhibits

Pursuant to Instructions for Preparation of Final Pretrial Order as Amended February 15, 2001, section 7b, this list is hereby filed with the clerk no later than 11 days after these exhibits were provided to the plaintiff pursuant to the January 9, 2002, pretrial conference in this matter.

Defense Exhibit A: *Partial* Student/School Guaranteed Loan Application

A1. Relative to judicial review of the agency record related to the defendant's Treasury offset against the plaintiff noticed on 9/22/00 which triggered this action (Compl. #2), the defendant did not obtain, review, or disclose to the plaintiff, Exhibit A as part of prerequisite independent verification/notification for such involuntary collection for its claim. Exhibit A does not tend to make the existence of any fact of consequence to reviewing those agency records up to 9/22/00 more or less probable (FRE 401).

A2. On answering the plaintiffs defense (Compl. #12 et al.) to an alleged obligation, the defendant's showing or failing to show the disputed consummation of a promissory note signed on 6/17/85, by the plaintiff's receipt of a loan check in the amount and manner expressly identified in that agreement, is not demonstrated by post-suit

production/introduction of Exhibit A dated 5/6/85, which both logically and chronologically preceded the alleged consummation of said promissory note that estimated a disbursement on 7/4/85. Exhibit A is not relevant to the defendant's records of showing or not showing receipt of a loan prior to 9/22/00 offset action, but needlessly presents cumulative evidence of a loan request, which is not in dispute (FRE402 & 403).

A3. The defendant's 9/22/00 offset against the plaintiff was purportedly based on a loan approved and advanced by a lender as a consequence of the application represented by Exhibit A, but no loan identification appears in the space it provides "for lender use." At the time Exhibit A is introduced as evidence, the introduction of related writings from the lender, such as that loan identification, ought in fairness be considered contemporaneously (FRE 106) in any de novo determination outside the 9/22/00 agency records of whether Exhibit A qualifies as evidence sufficient to support, as a finding of fact, the existence of the disputed obligation alleged to have arisen by lender consummation of a later express written promissory note agreement (FRE104b).

A4. Exhibit A is incomplete; the signature in Part B School, any text below that signature on its face, separate instructions for completing "Part A Student" (as indicated at #10 & #16), agreed to conditions and authorizations given in the "student certification" printed on its reverse, and agreed to conditions given in the "education institution certification" printed on its reverse, are all missing from Exhibit A. The contents of those missing parts of the application, by which the plaintiff s reasonable understanding of his part in the agreement must be interpreted, ought in fairness be considered contemporaneously with the introduction of Exhibit A (FRE 106).

A5. As indicated in the defendant's 9/5/97 notice of intent to offset the plaintiff s Federal payments, program regulations prohibited any school from originating a postsecondary program loan request for a student without a high school diploma/GED. The educational institution

identified in Exhibit A acted in a loan-origination capacity and as fiduciary to all parties involved-and, in fact, the defendant has asserted that the school's receipt of loan funds obligated the plaintiff, notwithstanding contrary express terms and contemporary (pre-COBRA) code effective for that alleged disbursement. The school's willful or negligent certification of program eligibility for the plaintiff, who had previously attended community college classes but did not obtain a high school diploma until 1999; demonstrates that Exhibit A was not the result of the school's regularly conducted business activity of originating loans for eligible students, and that the source, method and circumstances related to the interested school's generating Exhibit A is untrustworthy (FRE 803(6) exclusion). The records the school was required to maintain on its determination of the plaintiff's eligibility for the program/loan request it originated ought in fairness be considered simultaneously with Exhibit A (FRE 106).

A6. Exhibit A contains information, at #15 & 16, indicating the plaintiff did not have a prior student loan, when regulatory requirements for a school originating a first-time student/borrower loan requests under the FFEL program included prerequisite documentation of a prior denial for the loan by a non-program lender, and the partial disbursements of the loan amount over the loan period. This goes both to Exhibit A not being the result of the school's regularly conducted business activity for first-time student/borrowers, and to the untrustworthiness of the source, method and circumstances of information provided by the school in lieu of lender documents and records related to the claim (FRE 803(6) exclusion); the records on the school's determination that resulted in the loan application not being handled as a first-time borrower request, and of the lender writings showing loan money alleged to have been advanced on the basis of Exhibit A ought in fairness to be considered contemporaneously with its introduction as evidence.

A7. Exhibit A shows the educational institution reported (by the copies indicated in the upper left corner) to the guarantor, the lender, and the student that it expected zero "-0-" financial aid for the loan period according to this partial application for a $2,500 loan the school had the plaintiff sign on 5/6/85; Exhibit I shows that, on that very day, the school prepared an enrollment contract solely between itself and the plaintiff for $3,635 as the amount to be financed (for tuition less cash deposit). The school's failure to indicate this difference under expected financial aid for the loan period on Exhibit A demonstrates a lack of trustworthiness in the source, method and circumstances of information it generated related to the alleged loan (FRE 803(6) exclusion).

Defense Exhibit B:
***Legible* Promissory Note and Disclosure Statement**

B1. The defendant recorded the plaintiffs request to its contractor, Van Ru Corp., "he asks us to forwd copies of our corr for file when returning acct to our emplyr" (1/23/01-LI02 Collector Note Pad at 12/28/99) that Complaint Exhibit K shows should have included 11/11/99 and 12/10/99 requests that "any verification of debt should include a clear and legible copy of all paragraphs on the back side of the promissory note as well as any proof of actual disbursement of a loan received by me or on my authorization, neither of which I have ever received." In this case, the second page of the promissory note both for initial disclosures and for the defendant's 10/1/01 motion to dismiss were also illegible. The defendant did not disclose the promissory note in reasonably legible condition as to the terms on the reverse side to the plaintiff until after this suit, on June 6, 2001 (which the label copied, on the bottom right of the second page of this Exhibit B, shows to be the version the defendant is using now), so only page 1 of Exhibit B would fairly fall under reviewing agency records with respect to the disclosure of any document related to the claim to the

plaintiff up to the 9/22/00 offset that triggered this action (FRE 402).

B2. Where the promissory note itself may be a public record (filed/from the public office where such documents are kept) of the agreement it sets forth that was signed on 6/17/85 as part of the school's loan-origination for the plaintiff, it is not a record of the plaintiff's receipt of the specific consideration the lender thereby promised to exchange for the plaintiff s promise to pay the loan amount "to the extent it is advanced to me..." in its Paragraph I. In fairness and for contemporaneous consideration upon introduction of Exhibit B in this case, lender document/records are required, to show the disputed receipt of the consideration (FRE 106), which was expressly described in the terms of Exhibit B to be interpreted under specific code and regulations that were identified/effective for that agreement (see Ex. B XII). That is, a loan check payable to and endorsed by the plaintiff was the only form of disbursement under applicable program regulations at the time-and it was neither required to be sent to the school in the manner of post 1/86 disbursements (per 4/7/86 enactment of amendment by the Consolidated Omnibus Budget Reconciliation Act of 1985), nor intended by these parties to be delivered to the school's address, which does not appear in the note-as the sole consideration specified to result in a loan contract between the plaintiff and the lender arising from that agreement.

Defense Exhibit C:

[RI07] GSL Program Specific Screen dated 9/27/01

C1. The of[sic] 5/23/93 entry date for the information contained on this screen shows the defendant's reliance upon data provided by CSAC in relation to this claim alleged to have been generated eight years earlier; but, the defendant's own reviews of the CSAC with respect to such claims generally shows a lack of trustworthiness as to having guaranteed "loans" upon the submission of applications from schools without lender approval/

advances, and as to having allowed the status and lending institution for loans to have been changed in its system at the lender level without adequate CSAC supervision, among other circumstances that might result in a false loan/default guarantee claim. Specifically, discovery revealed that CSAC's required certification of its own compliance with due diligence regulations on the claim in this instance was false. Finally, although CSAC is required to have maintained certain of its own and the lender records for a minimum of five years after the loan is paid in full or written off, much of the specified documents/records are missing-including the lender claim for reimbursement and many of the materials required to be attached to it. This shows the agency records are not based on CSAC's records of regularly conducted activity, contain absences of records required to be kept in that regularly conducted activity, and are untrustworthy (FRE 803(6) exclusions, (7) & (8)).

C2. Specifically, with respect to the alleged disbursement on 6/21/85 ("DISBDTE"), the plaintiff has not been provided with any lender document or record of that alleged disbursement to answer his defense that he did not receive the loan, which both the school and the defendant assert that the school received, which was not a provision of disbursement on the promissory note (Ex. B)that did not indicate the plaintiff should expect to receive until after 7/4/85. Introduction of Exhibit C requires the introduction of the documents/records that detail the specifics of that disputed disbursement and which ought in fairness be considered contemporaneously in determining if it met the terms of the plaintiff s agreement with the lender.

C3. On the defendant's record of the plaintiff s alleged withdrawal from enrollment at the school as 12/13/85 ("WITHDRAWAL"), the plaintiff was not advised of any discrepancy between his identification of his withdrawal that the defendant recorded as "after the first class" (1/23/01 L102 Collector Note Pad at 9/2/98), "after 1 class" (*ibid.* at 11/12/98), "at the end of the first day of class"

(*ibid.* at 12/21/99) prior to this suit. The defendant has not produced the source from which this 12/13/85 date was recorded for the plaintiffs withdrawal, and has provided materials that contradict that date during discovery (i.e., Ex. A #24). In fairness, the source of this data, previously withheld from the plaintiff, is required for consideration contemporaneously to the introduction of Exhibit C (FRE 106); but, this calls into question the trustworthiness of all the information from the defendant's system pertaining to its claim against the plaintiff for which there alre no source documents or records to show the origination, method or circumstances of its preparation-which only includes the interested school and the interested state guarantor to date, but not the lender the plaintiff is alleged to have received a loan from-do not similarly lack substance/trustworthiness (FRE 803(6)-(8)).

C4. On the "AMTCOLBYGA," which the defendant's 10/1/01 motion to dismiss first disclosed to the plaintiff is claimed to have been an amount collected by CSAC, the defendant did not advise the plaintiff of any record of actual contact, much less payment, between himself and CSAC when the defendant recorded the plaintiff's statements "never had contact with school again and never rcvd any docs concerning In until CSC Cred then Diversified Collection contacted borr in 1993" (1/23/01-L102 Collector Note Pad at 9/2/98) or "claims nobody contacted him for years" (ibid. at 11/12/98). The extant CSAC records defendant provided during Discovery do not include the required collection history that should show the details of such payment; therefore, in fairness upon introduction of this data of an alleged payment collected by CSAC, the source of this information is required for contemporaneous consideration (FRE 106), particularly where its source indicated untrustworthiness in this matter by false certification of required due diligence.

C5. Not only is the record of the alleged default date of 4/15/87 ("DEFTDTE") not supported by any lender documents/records disclosed to the plaintiff, or even by

the terms of (and code applicable to) the promissory note, but also the alleged next-day payment of that default claim on 4/16/87 ("ORGCLMP A YDTE") is so apparently unrealistic with respect to a transaction between a lending institution and a state government agency, that the submission of Exhibit C requires the introduction of the original sources of that data, (i.e., the lender default claim with supporting documents/records and the original submission of this information from the CSAC) for its contemporaneous consideration.

C6. The defendant's discovery disclosure in this matter shows that CSAC accepted the default claim from lender #801178, but the defendant's records reflect that the plaintiff was only copied the promissory note that identifies the lender from whom the plaintiff was to receive a loan advance was #828374. In fairness, the documents and records of the transition of the "originating lender" from the institution with which the plaintiff entered the express agreement that the defendant claims to be collecting against on behalf of a different institution should be introduced for contemporaneous consideration with the identification of the lender in Exhibit C.

Defense Exhibit D:
[LI06] Letter History Screen dated 9/27/01

D1. Exhibit D is incomplete as to the initial demand the defendant sent to an East Broadway address in California in May of 1993. This omission appears to exclude the possibility that the plaintiff did receive it by postal forwarding to his correct California address in late June of 1993, as described in Complaint #7; in fairness, the complete letter history to the date of its printing (such as displayed in initial disclosures USOOO026-27) should be provided for consideration upon the intr'oduction of Exhibit D (FRE 106).

Defense Exhibit E:
[LI02] Collector Note Pad dated 9/27/01

D[sic]1. Exhibit E is significantly incomplete as to the plaintiff s letters that the defendant recorded with enough detail to recognize and match with the letters submitted as Complaint Exhibit K. This is not the only incompleteness of the record (i.e., many of the plaintiffs communications were not recorded as to their content, just as "received letter from debtor"), but it is an incompleteness that is correctable by printing out the entire Collector Note Pad to date (such as USOOOO15-25 for initial disclosure in this matter). Since Exhibit E is the record the Court will review in determining whether the defendant complied with requirements to provide information and opportunities to the plaintiff before it took the step of administrative offset on 9/22/00, in fairness the complete Collector Note Pad should be provided for consideration upon the introduction of Exhibit E, which omits numerous lines of the record from 2/8/95-3/21/95, 10/30/97- 10/30/00, and 2/1-2/9/01 inclusive, including many that confirm events cited in the Complaint (FRE 106).

Defense Exhibit F:
[LI03] Account Transaction Screen dated 9/27/01

D[sic]1. Since Exhibit F reflects adjustments to the balance of the defendant's claim by an increase to the balance in 1993, with no further activity until after the turn of the century and the defendant's offset against the plaintiff on 9/22/00, and the Complaint charges that the defendant avoided using any process that would require it to prove the claim was a valid and legally enforceable debt until after the expiration of applicable record retention requirements that it did not exercise the option to extend in this case, in fairness the source documentation of the defendant's use of all available administrative collection actions in keeping with the 1996 Debt Collection Improvement Act goal of timely, aggressive collections that afford the consumer due

process should be introduced for contemporaneous consideration of the defendant's record of activity during the period indicated by the introduction of Exhibit F (FRE 106).

Defense Exhibits G & H dated 10/01/01:
[R101] Research Account Screen & [L130]
Rehabilitation and Consolidation, respectively

G/H. Because both Exhibit G and Exhibit H are based on a principal amount of $2,666.94, in fairness, the source document showing the plaintiff s receipt of the consideration described on the promissory note (Exhibit B), by which the defendant has alleged a contract arose and by the absence of which the plaintiff has defended that alleged obligation, should be introduced for contemporaneous consideration upon their submission in this case (FRE 106).

Defense Exhibit I:
Partial Student/School Retail Installment
Contract/Student Enrollment Agreement

I1.. Relative to judicial review of the agency record related to the defendant's Treasury offset against the plaintiff noticed on 9/22/00 which triggered this action (Compl. #2), the defendant did not obtain, review, or disclose to the plaintiff, Exhibit I as part of prerequisite independent verification/notification for such involuntary collection for its claim. Exhibit I does not tend to make the existence of any fact of consequence to reviewing those agency records up to 9/22/00 more or less probable (FRE 401).

I2. As a separate, earlier agreement between the plaintiff and a different party than of the alleged loan contract-the performance/liability under each of the two agreements having been clearly separate under the applicable program according to the defendant's 10/1/01 motion to dismiss Exhibit I was not part of the alleged loan contract that was the basis for the defendant's 9/22/00 offset against the plaintiff in this instance. Therefor, Exhibit I is relevant neither to reviewing the

defendant's records for 9/22/00 offset, nor to establishing the consummation of the specific promissory note agreement the defendant alleges resulted in a loan contract (FRE402).

I3. Exhibit I is both almost completely illegible and incomplete, with a notice at its bottom to see additional terms on a reverse side that is not included in Exhibit I. The introduction of its complete and comprehensible terms partially represented in Exhibit I that ought in fairness be considered contemporaneously for the relevance of this school contract's introduction for the disputed consummation of an express written agreement with a lender is required (FRE 106).

I4. The introductory paragraph on the face of Exhibit I states its contents and covenants govern the agreement between the school and the plaintiff; and the paragraph preceding the "notice to buyer" paragraph above the signature boxes makes time of the essence of that contract. The payment schedule recorded on Exhibit I is a single payment of the total tuition due 5-20-85, followed by a preprinted statement that "the policy of the school. is: all tuition and fees are due and payable on the first day of attendance," and a handwritten clause "100% of tuition due upon acceptance to TTC1;" but the school did not obtain the plaintiffs signature on a promissory note to repay the extent of a lender's advance to him until 6/17/85, without any written amendment to Exhibit I in evidence. Where the school is shown not to have modified or enforced some of the terms of its own contract, such as those related to time and payment, the possibility that it acted outside the plaintiff s agreement with respect to disbursement of the loan it originated for him is reasonably raised where there is no evidence that the plaintiff received the lender's advance in the manner expressly described in the promissory note agreement. That is, not only does the age, condition and previous non-disclosure of Exhibit I by the defendant show it to lack relevance in this matter (FRE 402), but the content of Exhibit I indicates a lack of trustworthiness in the source,

method and circumstances of school materials introduced (FRE 803(6) exclusion).
Respectfully submitted this 21st day of January, 2002:

s/*BruceEdwards*
Bruce Edwards
Plaintiff pro se
1001 Emporia Street
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#91 Objections (to counsel's misleading) 4/5/02

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Filed U.S. District Court District of Colorado
2002 APR-5 PM 12:01 James R. Manspeaker Clerk by ___ Dep. Clk

Bruce Edwards,
PLAINTIFF

v.

U.S. Department of Education,
DEFENDANT

Civil Action No. 01-BB-36

Plaintiff's Objection to Defendant's April 3, 2002 filing in response to "Plaintiff's 28 U.S.C. § 636(c)(4) Motion for Chief Judge Lewis T. Babcock to Vacate His Orders of Reference to Magistrate Judges, under Extraordinary Circumstances Shown"

Plaintiff pro se Bruce Edwards hereby objects that Defendant's Response to Motion to Withdraw Reference Pursuant to 28 U.S.C. § 636(c)(4) filed Apri13, 2002, was made in bad faith to continue deliberately misleading the Court, as most briefly illustrated by—but not limited tothe second sentence under "Facts" #3, "A review of the docket for this case indicates that the Plaintiff never filed a response [to Defendant's October 2, 2001 motion for summary judgment or, in the alternative, dismissal pursuant to Fed. R. Civ. P. 12(b)(6)[sic]]."

The Defendant was duly served with copies of the Plaintiff's ten filings in response to Defendant's October 2, 2001 motion for summary judgment or, in the alternative, dismissal pursuant to Fed. R. Civ. P. 12(b)(6); the first nine of which appear below under the abbreviated captions by which they were referenced in Judge Boland's Order filed October 26, 2001:

1) [October 10, 2001] Motion for Enlargement *[denied as moot];*
2) [October 17, 2001] Second Motion for Enlargement *[denied as moot];*
3) [October 17, 2001] First Motion to Strike *[found inappropriate and denied];*
4) [October 17, 2001] Second Motion to Strike *[found inappropriate and denied];*
5) [October 17, 2001] Third Motion to Strike *[found inappropriate and denied];*
6) [October 17, 2001] Fourth Motion to Strike *[found inappropriate and denied];*
7) [October 17, 2001] Fifth Motion to Strike *[found inappropriate and denied];*
8) [October 22,2001] Sixth Motion to Strike *[found inappropriate and denied];*
9) [October 22, 2001] Seventh Motion to Strike *[found inappropriate and denied];* and
10) [November 20, 2001] Plaintiff"s Response in Opposition to Motion to Dismiss (so captioned by Judge Boland's Order filed October 26, 2001)

Respectfully submitted this 5th day of April, 2002:

s/*Bruce Edwards*
Bruce Edwards
Plaintiff pro se
1001 Emporia Street
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#99 Administrative Record (AR) 5/15/02

5/9/02 Certification

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado *BB*
MAY 15 2002 PM 1:37 James R. Manspeaker Clerk s/*JU*}

Civil Number: 01-~~B~~*BB*-0036

BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Harold Jenkins, declare as follows:

I am the Assistaant General Counsel for Postsecondary Education in the Office of the Gcneral Counsel, United States Department of Education (Department). Pursuant to delegated authority, I hereby certify that the attached pages 000001 through 000022 constitute true copies of the Department's Administrative Record compiled for use in the above-captioned case seeking review of the administrative proceedings before this Department.

s/*Harold Jenkins*
Harold Jenkins
Executed in Washington, D.C. on May *9*, 2002.

Index

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Number: 0l-B-0036
BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

INDEX OF ADMINISTRATIVE RECORD ON REMAND

Bates Stamp #	Title/Subject	Date
000001	Final Agency Decision Signed by Diane Spadoni	8.31.00
000003	Promissory Note for Guaranteed Student Loan (GSL) in the amount of$2,500,00.	6.17.85
000005	Federal Family Education Loan Program Specific Screen (R107) from Education's Debt Management Collection System (DMCS).	5.9.02
000006	Letter History Screen (L106 Screen) from DMCS.	5.9.02
000012	Collector Note Pad (L102 Screen) from DMCS.	5.9.02
000022	Account Profile Screen (R109 Screen) from DMCS, balance as of August 29, 2000.	5.9.02

#1-2 (see 8/31/00 DCS reply, p. 182 supra)

#3-4 (see promissory note, p. 133 supra)

#5 5/9/02 (R107) GSL Program Specific

Page: 1 Document Name: untitled
(R107) GSL PROGRAM SPECIFIC SCREEN ED0834
REGION: 09 ACCT OWNER: ED107 05/09/02
ACCT NO: S***[SSN] 10:19
ACCT NAME: EDWARDS BRUCE
PREV NAME: ___
STUDENT NAME: ___
STUDENT ID: 0

PAGE 1 OF 1

DEBT NO: G199309030022801
DATE ENT: 05/25/93
PRINCIPAL: 2,666.94
INTEREST: ___
PENALTY: ___
ADMIN: ___
FEES: ___
TOTAL: 2,666.94
ENDORSER: P
LENDER: 801178
ORGAGY: CA706 SID: 007926
LNGUARDT: 06/06/85 LOANTPE: STAF
DEFTDTE: 04/15/87 CBOCCDATE: 04/16/87
GA BAL DATE: 03/28/88
ORGCLMPAYDTE: 04/16/87 PRINPDLENDER: 2,500.00
INTPDLENDER 174.79 INTCAPBYGA: 174.79
AMTCOLBYGA: 211.85 LASTPDGA: ___
ORGSOLDT: 12/01/85
LITIND: N JUDMTDT: ___ JUDMTEXPDT: ___
WITHDRAWAL: 12/13/85
DISB AMOUNT: 2,500.00 DISBDTE: 06/21/85
RATE: 8.00%

PF13-R101 14-R102 15-R103 16-R104 17-R105 18-R106
19-R107 20-R108 21-R109
Date: 5/9/2002
Time: 11:20:09 AM

{000005}

#6-11 5/9/02 (L106) Letter History

[Note: subsequent pages omit repeated head/foot (bold); Admin. Rec. Index Bates numbers appear in {}]

Page: 1 Document Name: untitled

(L106) LETTER HISTORY SCREEN ED0834
REGION: 09 ACCT OWNER: ED107 05/09/02
COLL NUM: 10:19
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,453.10 PROJ/ACT CA: 0.00
CA BALANCE: 5,453.10

Letter Sent Dat	Requester Code	Letter Type	Street	Zip	U
09/17/01	GDIRS 610	U19	1001 Emporia St	80010	
05/17/01	TDLET 500	W41	1001 Emporia St	80010	
05/09/01	AG420	08A	1001 Emporia St	80010	
05/01/01	GDCA R515	A50	1001 Emporia St	80010	
02/12/01	GDIRS 610	U19	1001 Emporia St	80010	
01/18/01	GDCA R565	399	1001 Emporia St	80010	
01/04/01	GDCA R565	377	1001 Emporia St	80010	
12/14/00	GDCA R565	400	1001 Emporia St	80010	
11/08/00	GDCA R565	399	1001 Emporia St	80010	
11/08/00	ED029 1	A58	1001 Emporia St	80010	

10/29/00	GDCA R565	377	1001 Emporia St	80010
09/26/00	GDCA R515	A50	1001 Emporia St	80010
01/16/00	GDCA R565	445	1001 Emporia St	80010
01/09/00	GDCA R565	457	1001 Emporia St	80010
01/09/00	GDCA R565	457	1001 Emporia St	80010

Date: 5/9/200 Time: 11:20:29 AM {000006}

09/17/01	GDIRS 610	U19	1001 Emporia St	80010
05/17/01	TDLET 500	W41	1001 Emporia St	80010
05/09/01	AG420	08A	1001 Emporia St	80010
05/01/01	GDCA R515	A50	1001 Emporia St	80010
02/12/01	GDIRS 610	U19	1001 Emporia St	80010
01/18/01	GDCA R565	399	1001 Emporia St	80010
01/04/01	GDCA R565	377	1001 Emporia St	80010
12/14/00	GDCA R565	400	1001 Emporia St	80010
11/08/00	GDCA R565	399	1001 Emporia St	80010
11/08/00	ED029 1	A58	1001 Emporia St	80010

10/29/00	GDCA R565	377	1001 Emporia St	80010	
09/26/00	GDCA R515	A50	1001 Emporia St	80010	
01/16/00	GDCA R565	445	1001 Emporia St	80010	
01/09/00	GDCA R565	457	1001 Emporia St	80010	
01/09/00	GDCA R565	457	1001 Emporia St	80010	

Date: 5/9/2002 Time: 11:20:42 AM FIRST PAGE {000007}

12/24/99	GDCA R565	444	1001 Emporia St	80010	
12/10/99	GDCA R565	443	1001 Emporia St	80010	
11/24/99	GDCA R565	442	1001 Emporia St	80010	
11/24/99	GDCA R565	457	1001 Emporia St	80010	
10/29/99	GDCA R515	A50	1001 Emporia St	80010	
08/13/98	GDCA R565	X68	1001 Emporia St	80010	
07/24/98	ED023 2	A50	1001 Emporia St	80010	
09/05/97	GDIRS 610	N18			
08/08/97	ED023 2	U79	1001 Emporia St	80010 -0000	
01/24/97	GDCA R565	V72	1001 Emporia St	80010	U

12/26/96	GDCA R565	V74	1001 Emporia St	80010
10/11/96	GDCA R565	V70	1001 Emporia St	80010
10/09/96	GDCA R565	V70	1001 Emporia St	80010
09/14/96	GDCA R565	V70	1001 Emporia St	80010
08/28/96	GDCA R565	V70	1001 Emporia St	80010

Date: 5/9/2002 Time: 11:20:44 AM {000008}

08/24/96	GDCA R565	V70	1001 Emporia St	80010
08/18/96	GDIRS 610	N18	623 E Broadway 1	90802
08/15/96	GDCA R565	V70	1001 Emporia St	80010
08/08/96	GDCA R565	V70	1001 Emporia St	80010
07/04/96	GDCA R565	Y70	1001 Emporia St	80010
06/21/96	GDCA R565	E26	1001 Emporia St	80010
06/07/96	GDCA R565	V70	1001 Emporia St	80010
05/25/96	GDCA R565	E40	1001 Emporia St	80010
05/11/96	GDCA R565	V74	1001 Emporia St	80010
04/12/96	GDCA R565	E42	1001 Emporia St	80010

04/09/96	GDCA R565	E38	1001 Emporia St	80010	
01/20/96	GDCA R565	D00	1001 Emporia St	80010	
01/17/96	GDCA R565	D00	1001 Emporia St	80010	
09/07/95	GDIRS 610	N18			U
02/14/95	GDCA R565	D00	623 E Broadway 1	90802	U

Date: 5/9/2002 Time: 11:20:46 AM {000009}

09/02/94	GDIRS 610	N18			U
04/12/94	GDCA R565	D02	623 E Broadway 1	90802	
04/09/94	GDCA R565	D07	623 E Broadway 1	90802	U
03/23/94	GDCA R565	D09	623 E Broadway 1	90802	
03/18/94	GDCA R565	P02	623 E Broadway 1	90802	
03/02/94	GDCA R565	D02	623 E Broadway 1	90802	U
02/08/94	GDCA R565	D09	623 E Broadway 1	90802	U
12/15/93	GDCA R565	D09	623 E Broadway 1	90802	
11/29/93	GDLE T801	N07	623 E Broadway 1	90802	
11/08/93	GDCA R565	DOL	623 E Broadway 1	90802	U

10/30/93	GDSK P502	N03	623 E Broadway 1	90802	U
09/21/93	GDIRS 610	N18			U
08/18/93	GDLE T801	N07	623 E Broadway 1	90802	
07/18/93	GDSK P502	N03	623 E Broadway 1	90802	U
06/27/93	GDLE T801	N07	*623 E Broadway 1	90802	U

Date: 5/9/2002 Time: 11:20:48 AM {000010}

5/26/93	GDNE WS510	N03	*623 E Broadway 1	90802	U

Date: 5/9/2002 Time: 11/20/49 AM LAST PAGE {000011}

PF13-L101 14-L102 15-L103 16-L104 17-L10S 1B-L106 19-L107 20-L108 21-L109 22-L1

#12-21 5/9/02 (L102) Collector Note Pad

[Note: subsequent pages omit repeated head/foot (bold); split entries consolidated, Bates numbers in {}]

Page: 1 Document Name: untitled

(L102) COLLECTOR NOTE PAD ED0834
REGION: 09 ACCT OWNER: ED107 05/09/02
COLL NUM: 10:20[/1]
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,453.10 PROJ/ACT CA: 0.00
CA BALANCE: 5,453.10

Date	Source Code	Narrative
12/09/93	EA 789999	LC1 10:45 (gc) ph. res. 310-432-6398 LC1 10:46 T1 WR # LC1 10:46 3SKP skip trace accounts LC1 10:46 Account transferred via G.C. LC1

		10:46 lr #457 1
11/03/94	EA 789999	VX1 4:36 ls #457
11/05/94	EA 789999	VX4 12:18 ls #472
11/29/94	EA 789999	VX5 12:28p ls #457
01/04/95	EA 789999	VX5 6:41p ls #457
02/08/95	EA 789999	TNC 4:51p (gc) ph. pos. 310-422-4230 TNC 4:51p Timed call back 02/15/95 04:54pm TNC 4:51p 3SKP POS DISC
02/09/95	EA 789999	VX1 4:29 ls #460 VX1 4:29 lr #451 1 VX1 4:29 3CRF CBR SCORING F sys Lser 200 03/01/95
03/01/95	EA 789999	VX1 8:57 ls #451 VX1 8:57 lr #457 1 *** Time: 11:22:25 AM {000012} VX1 8:57 3CRF CBR SCORING F sys lser 200 03/21/95
03/08/95	EA 789999	MFP 8:28 Transferred from CEC to SA2
03/21/95	EA 789999	VX1 9:36 ls #457 VX1 9:36 lr #459 1 VX1 9:36 3CRF CBR SCORING F sys lser 200 04/10/95
06/25/96	EA9999	note; recd ltr frm dtr rqsting pnotes per; dtrs rqst=MP DCS rec'd ltr from debtor; SFO pgs: 1
06/26/96	EA9999	note; recd req for pnotes/ordered docs=RF req docs from client; pnotes for debtor/MW; pnote ordered/JN
06/27/96	EA9999	DCS rec'd ltr from debtor; SFO pgs:1

07/03/96	EA9999	req docs from client; requested notes...SW
07/11/96	EA9999	note; recd pnotes for dtr complete/MB
07/12/96	EA9999	docs rec'd from client; SFO pgs: 2
08/27/96	EA9999	note; db req for loan docs--CD
08/28/96	EA9999	note; recd req for pnotes/dox recd 7/12/96/; will resnd per CD req=RF DCS rec'd ltr from debtor; SFO pgs:1
08/30/96	EA9999	note; resent pnotes (G224) per CD req/ MB *** Time: 11:22:25 AM {000013}
01/24/97	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
01/27/97	EA9999	note; per ltr recd 01-24 re-rqsting pnotes; and itmz to ref bck for verf =MP
01/31/97	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
02/18/97	EA9999	DCS rec'd ltr from debtor; SFO pgs: 1; per ltr recd dtr is rqsting us to; cease and desist all coll on dbt =MP debtor,requests no calls at home debtor,requests no calls at work debtor,requests no mail at home debtor,requests no mail at address 2
10/16/97	ED9390	[“]***[”]received TOP hearing/review[“]******[”]
10/20/97	ED9264	[“]****[”] req copy of pn E Esguerra
10/30/97	ED9206	rec'd TOP review, cust states he did not have a high diploma/GED and tht the sch sign his name without his permission, snt cust ATB & Unauthoized Signature appl and copy of pn.

S .Amey

04/03/98 ED9206 rec'd ltr frm cust stating he does not fit in either category, ATB or Unauthorized. Cust still states he does not owe the debt. Cust did not snd back the ATB or Unathorized Sign appl. S.Amey

09/02/98 EA9999 corr rec'd ltr from borr disp WB/JLW validity of
*** Time: 11:22:25 AM {000014}
debt with each agencythat has snt notice of the same
borr also states having rcvd the copy of the p/n offered as proof of a debt but only proves that borr req the ln which he does not disp
but the ln was not completed
after applying for the loan attended only the first class
after that talked to the administratorand informed him he was withdrawing
he told borr all he would have to do was submit wtihdrawl in writing which borr claims he did
naand[sic] never had contact with school again and never rcvd any docs concerning ln until CSC credit then Diversified Collection contacted borr in 1993
and responed promplty no ln had been executed and did not save copies of this exchange
next time borr was contacted regarding this matter was 1/96 and disp again
borr also states confirmed signature on the p /n but advised had no

		knowledge of any activity pertaining to ln have not had response to hearings branch borr answer to these demands has always been[sic end]
09/16/98	EA9999	corr rec'd duplicate of batch WB/JLW 1714 dated 8-31 new batch 571 dated 9-14 J.Walker *** Time: 11:22:25 AM {000015}
11/12/98	PIC307	MI borr sz signed pnote, but was only req the loan. He never rcvd money. Sz dropped out of school after 1 class. Claims nobody contacted him for years. Snt ltr adv word "loan" is clearly marked on pnote. His resp to keep track of his debts & make sure they are settled. Exp pnote - when he signed it, he agreed to pay the loan. Exp students generally dont rcv stud loan money directly. Exp if he bel the school failed to pay the lender a refund, he needs to snd proof to REG09. Ref to AG522 for more info. JScott.
11/15/99	EA9999	recvd corr re mail bor snt in ltr sd disps ln sd never recvd money & withdrew from the schl- sd fls is not oblgtd to py ln bk
12/21/99	EA9999	recvd corr (re mail) ltr sd dsp & reqstd ver of debt to show proof of recpt of ln & we didnt provide him w/that-- sd didnt attnd, formally to w/drew at the end of the first day of class--

sd acct has been held open in err &
DOE can use this for all future
attmps to cll any way we choose to
wont discuss ln w/ cll agncy--
will req for info when we demand for
repmt is snt--(DIS)
*** Time: 11:22:25 AM {000016}

12/28/99 EA9999 recvd corr (re mail) ltr frm bor
sd has never given us a reason to
think he was unable to repay
but in fact wants to make ppa
towrds loan--
sd he proposed ln was never xecuted
& no money was disbursed to bor or
by his authorization--
sd we didnt snd reqstd ver of debt
w/n the 30dys recvd
we placed him on notice w/credit
reporting agency for which we cant
provide proof of--
actions would b unnecessary,
inappropriate, or malicious
maneuver to cause suffering for no
ln excuted--
sd will b frwdding copies of corr to
both Fedrl & State agencies, w/ req's
for action of misreprsntations--
while no furthe reason 4 us 2 keep
acct active, he asks us to forwd
copies of our corr for file when
returning acct to our emplyr--(DIS)

01/12/00 EA9999 recvd corr re mail corr
type Complnt-
State of CO snt in ltr
sd w/ our lack of respnse to possess
verification of the debt, we put a
notice on him
sd ths is a threat to damage his fin

& professionl reputation-
enclsd cpies of previous corr-
also snt in ltr frm State of CO
sd plse rev
*** Time: 11:22:25 AM {000017}
& rspnd w/in 20dys of the dt on ltr-
sd the respnse shld be frm Clctn
Managr, Owner, Officer, or Atty-
sd it shld inclde clctn activiy notes,
cpies of docs & corr-
sd respnse won't be considered
complete until docs are provided-
sd the complaint wld be reviewed &
to see if there is a violtion of the CO
Fair Dbt Clctn Practices Act-
snt IMF & Cmplnt to Contrct
Monitor M.Patterson-
also fwrd cpies to managers..J.Ortiz

01/14/00 EA9999 ["]***["] snt Complaint respnse
Airborne to State of CO w/VR note
pad, to Contct Monitr M. Patterson
also fwrd cpy to Mr.Ciro["]***["]

01/26/00 EA9999 recvd corr (re mail) ltr frm bor
sd it isnt permitted by law 2 cll on
debts t dont xist
we nevr suppld the proof of debt n
our 1st cntct & he has reqstd sevrl
x's-
sd recvd 2 idntcl ltrs t sd we
undrstnd the concerns bor raises &
for him 2 cntct a cll here--
will respnd any asstnc n writing, but
find actvty on acct 2 dt proves it
necssry 4 all xchnges n writing than
verbally-
sd sd we & DOE r unrespnsive to
issues-
found p/n 2 his knwldg is

		unexecuted w/out his consent-- sd *** Time: 11:22:25 AM {000018} was signed off for reason of obliging him 2 repy 2 his xtent the pr & int advnced 2 him, n which case is zero- - ln wasnt made on disbrsmnt dte & no oblgtn by signtr on doc promising 2 repy if xtndd, ln was nevr made-- wants 2 keep all corrspnd 4 his recrds-- (COM)--copies frwdd-- IMF 2 Contract Monitor Mary Patterson[“]*****[”]F.Graves
01/27/00	ED4246	recalled acct per req fm PCA. M.Patterson/ASC
02/07/00	EA9999	recvd corr (re mail) a ltr frm bor sd he recvd our ltr of repmt options but we didnt nclud the only option for him & t was to clear acct to zero bal-- sd req's docs of debt offrd n 1st cntct this is his respns n writing, we havent containd the only choice to him in our offer-- has to have all activity on acct n writing-- wants to b able to respnd w/corrspndnce-- (OTH)[“]*****[”]F.Graves
03/28/00	ED4246	req cy of p-note to be fax to Sandra Miller, Atty Gen Off, Consumer Protection, State of Colorado at fax #303-8665691. M.Patterson/ASC
04/04/00	ED4246	rec'd p-note cy fm file and faxed to Sandra Miller at above #.

		M.Patterson/ASC
04/07/00	EA9999	rec corr re mail.Corr type-Com. Atty Gen of CO snt *** Time: 11:22:25 AM {000019} in ltr sd revwd corr twas snt. Sd notes do not indicate vrfctn to borr. Explns borr cntct w/ us. Explns the CFDCPA sd VR is in violation of the Act. Sd VR must immdtly chng notices to cmply w/ crrnt CO law. The collctn agncys do not warrant a frml adminstrtv hearng for dscplnry actn. Sd VR may appeal the issuance of this ltr by rqstng a hearng w/Collctn Agncy Board. Sd req must be w/in 40 dys of receipt of ltr. Sd a frml cmplnt wl then be issd and case wl be snt for full discplnry hearng. Frwrd cps to TAR, MTP, LPS, and Mary Patterson. Brown per prev notes ..did not frwrd cpy to Mary Patterson. NBrown
05/10/00	ED4246	req file docs for PCA. M.Patterson/ASC
05/23/00	ED4246	sent cy of p-note to PCA. M.Patterson/ASC
06/20/00	ED4246	req orig file, PCA cannot read pnote. M.Patterson/ASC
08/29/00	PIC596	MI-borr states in rather unclear terms that the debt is too old to be

		enforced and that he is disputing certif. for TOP; resp: gv authority for elimination of statute of limitations, gv authorit y for TOP and adv borr recv'd N18 (borr had includ
		*** Time: 11:22:25 AM {000020}
		a copy of the N18 with his ltr), refer to PIC phones. LBrooks
10/03/00	GD IRS635	*TOP*Bruce & Dani B Edwards 2000
10/30/00	EA9999	T/R tt kid sd he is not thre E.Davis T/R disc dscted 303 400 3485 E.Davis T/POE tt E.Davis T/POE tt wmn sd no in to vrfy E.Davis
11/06/00	EA9999	co rr borr snt ltr of disp. C.Burke
11/07/00	EA9999	corr update corr to cltr T.Domes
01/23/01	ED9291	per Vanessa Santos/OGC/HQ req recall acct fr AG524. Bwr filed suit against the dept. JLiu
05/09/02	ED0834	

PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109
Date: 5/9/2002
Time: 11:22:25 AM

{000021}

#22 5/9/02 (R109) Account Profile

Page: 1 Document Name: untitled
(R109) ACCOUNT PROFILE SCREEN 1 ED107
REGION: 09 ACCT OWNER: ED107 05/09/02
COLL NUM: 10:21
ACCT NO: S * * *[SSN]
ACCT NAME: EDWARDS BRUCE
REQUESTOR: ED0834
AS OF (MM/DD/YY): 08/29/00

ICRP: __

-ORIGINAL PRINCIPAL BALANCE: 2,666.94

-ORIGINAL INTEREST BALANCE: ___

-ORIGINAL FEES/COST BALANCE:___

-TOTAL INTEREST ACCRUED: 2,649.88

-ADMINISTRATIVE COSTS: ___

-PENALTY COSTS: ___

-FEES: ___

LESS CREDITS: SUBTOTAL: 5,316.82

-DEBTOR PAYMENTS: ___

-REFUND TRANSACTIONS: ___

-WRITEOFF TRANSACTIONS: ___

-OTHER ADJUSTMENTS: ___

SUBTOTAL:

CURRENT TOTAL DUE: 5,316.82

PF13-R101 14-R102 15-R103 16-R104 17-R105 18-R106 19-R107 20-R108 21-R109
Date: 5/9/2002
Time: 11:22:39 AM

#104 Objections (to #99 AR) 6/7/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court District of Colorado
2002 JUN-7 PM 5:02 James R. Manspeaker Clerk by s/G Dep. Clk}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff, pro se

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant

Objections Required by Order dated 4/22/02 with Supplemental Designation of the Record

Without waiving any prior objections filed during the proceedings for this abovecaptioned case, by the deadline established in the Order dated 4/22/02, in conjunction with today's filing of the Supplemental Designation of the Record, I hereby file my objections to the administrative record that was sent to me on May 10,2002, that was indicated as the intended submission under defendant's (EDUC's) *Notice of Filing of Administrative Record* on 5/15/02 in defense counsel's May 13, 2002 letter to me (attached).

Besides the objectionable fact that the 5/9/02 certification as the "administrative record" is almost entirely *different* from those EDUC has submitted under identical names earlier in these proceedings-which also carried defense counsel signatures constituting certifications "to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure [was] complete and correct as of the time it is made" [FRCP 26(g)(1)]; that 5/9/02 compilation as the "administrative record" includes a great deal less information relevant to issues raised in my Complaint filed 1/8/01.

I understand *plenary* to mean "complete in every respect." The "copy of Olenhouse v. Commodity Credit

Corporation, 42 F.3d 1560 (10th Cir 1994) [attached] to this Order [dated March 5, 2002];" states, at 1564, it "delineates the standards to which the district court must conform" upon review of an administrative agency case:

> Where questions of due process and sufficiency of the evidence are raised on appeal from an agency's final decision, the district court must review the agency's decisionmaking process and conduct a plenary review of the facts underlying the challenged action. It must find and identify substantial evidence to support the agency's action and may affirm agency action, if at all, only on the grounds articulated by the agency itself. This cannot be done in [a] context...which allows the agency to define the issues on claimant's appeal
> *Olenhouse,* 42 F3.d at 1565-66.

Most of the facts underlying the actions I challenge, both formal and informal, were not disclosed by EDUC until *after* I filed suit. Defense counsel's inference that I am simply mistaking initial disclosures in this litigation for a hearing record-apparently to consist of a very few arbitrarily designated *internal agency documents* (plus a promissory note for which my defense of non-consummation according to its express terms has yet to be met under the burden of proof upon alleging a contract) by which EDUC wishes to *expand* the actual record of review upon my timely 10/16/97 filing-as *limiting* the issues on my appeal, is mistaken in the extreme.

The review I seek as "[p]ursuant to 5USC704" [Compl. #2] (see 5 U.S.C. 704 includes preliminary, procedural, and intermediate agency action, as subject to review, upon review of the final agency action. The protections I claim are under the Administrative Procedure Act, and the standards EDUC must have met are found in its own

loan guarantee and debt collection regulations, as well as those applicable to agencies in general.

In such circumstances, inquiry is required to be substantial and to determine whether EDUC considered all *relevant* factors, whether or not the agency chooses to recognize them.

> Judicial review of both formal and informal agency action is governed by § 706 of the APA...([with *Overton Park,* 401 U.S. at 413-14, 91 S.Ct. at 822] construing [5 U.S.C.] § 706(2)(A)-(D), the "generally applicable" standards). Formal agency action must be set aside...also if the action is unsupported by "substantial evidence" in the hearing record. *Id.* at 414, 91 S.Ct at 822 (construing § 706(2)(E)). These standards **require the reviewing court to engage in a "substantial inquiry."** *Overton Park,* 401 U.S. at 415, 91 S.Ct. at 823...

and,

> ...The **duty of a court reviewing agency action** under the "arbitrary or capricious" standard [of APA § 706(2)(A)] is **to ascertain whether the agency examined the relevant data** and articulated a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.,* 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983). In reviewing the agency's explanation, **the reviewing court must determine whether the agency considered all relevant factors** and whether there has been a clear error of judgment. *Id.* (citing *Overton Park,* 401 U.S. at 416, 91

S.Ct. at 823); see *Sabin v. Butz,* 515 F.2d at 1069 (citing *Overton Park*).

[bold emphases added, both paragraphs]

Of course, I have no objection to *adding* a legible version of the subject Promissory Note and Disclosure Statement for review of all the express written terms and facts related to them, but see no reason to ignore all pre-suit disclosures were of *half-legible versions* (*i.e.,* Compl. Ex. D filed 1/8/01 in reviewing agency compliance with applicable disclosure regulations. Further, defense counsel recently advised me" '[t]he focal point for judicial review of an APA appeal should be the administrative record in existence, not some new record made initially in the reviewing court,' *Camp v. Pitts,* 411 U.S. 138, 142 (1973)," (attached 5/13/02 letter, ¶2), but proceeded to file, as the " Administrative Record," an extremely reduced quantity of different, only recently printed versions of Education's Debt Management Collection System (DMCS) "records" than produced and certified last year for FRCP 26(a)(1) disclosures. This ignores that record keeping, disclosure, review requirements, control of collection contractors and debt collection practices are all components of the Administrative Procedure Act *and* my Complaint.

The Administrative Record I was sent on 5/10/02 (compared not only the data disclosed during these proceedings, but also numerous admissions and statements about the state of the actual agency record of the account in my name) is a remarkable contradiction of defense counsel's further advisement, " '[t]he complete administrative record consists of all documents and materials directly or indirectly considered by the agency,' *Bar MK Ranches v. Yuetter,* 994 F.2d 735,739 (10th Cir. 1993)," *Id.* The disparity is tremendous when one includes materials *indirectly* considered in EDUC's pursuit of its claim against me.

While these objections cannot possibly address the issues to be dealt with in my opening brief, those issues must not be limited by EDUC's preference to ignore facts

and evidence already certified and disclosed during this litigation:

> Isolated bits of evidence, taken out of context and overwhelmed by other evidence, will not support an affIrmance of agency action. By relying on such "evidence," the District Court commit[s] reversible error. Olenhouse v. Commodity Credit Corporation, 42 F3.d 1560, 1578 (10th Cir. 1994);

Again, without trying to make my case in this document, there are Federal Rules of Evidence that apply to government documents and records, party-opponent statements and admissions, hearsay exceptions, etc., that do not afford the paring of the record EDUC wishes:

"An agency's decision is entitled to a presumption of regularity, "but **that presumption is not to shield '[the agency's]' action from a thorough, probing, in-depth review**." Olenhouse at 1574, citing *Overton Park,* 401 U.S. at 415,91 S.Ct. at 823

It is the *Court's* assessment of the record, relevant factors, facts, evidence and reasoning, including whether the agency entirely failed to consider an important aspect of the problem, that controls here, and where the parties' interpretations of those elements may contribute to the determinations, the omission of information cannot.

I am offering these objections and filing my Supplemental Designation of the Record, the majority of which is admittedly materials and information I received from EDUC during these proceedings—but is by no stretch of imagination new or made initially in the reviewing court—for issues I intend to address in my brief. While the issues in my Complaint admittedly are not as limited as EDUC would seek if it had initiated litigation for enforcement of a debt against me, this suit is for review of *agency action;* I am not the defendant in this case, and the facts and evidence are not moot simply by having been hidden (except, of course, as might relate to that portion

of this case contained within the hearing record for formal agency—but that is by no means the entire cause of action, only its trigger).

Respectfully submitted this 7th day of June, 2002.

s/*Bruce Edwards*
Bruce Edwards, Plaintiff pro se
1001 Emporia Street, Aurora, CO 80010-3825
(303) 341-9422[sic] (non-published, home)

U.S. Department of Justice
John W. Suthers
United States Attorney
District of Colorado Civil Division
1225 Seventeenth Street. Suite 700
Seventeenth Street Plaza
Denver, Colorado 80202
(303) 454-0l00 (FAX) (303) 454-0404

May 13, 2002

VIA FEDERAL EXPRESS
Bruce Edwards
1001 Emporia St.
Aurora, CO 80010-3825
RE: *Edwards v. US. Dep't of Ed.,* No. 01-BB-36
Dear Mr. Edwards:

I am in receipt of your letter addressing your objections to the administrative record compiled by the Department of Education.

Your letter seems to assume that because the Department of Education previously submitted documents as part of its initial disclosures in this litigation, those documents must necessarily be included in the administrative record. That is not so. The focal point for judicial review of an AP A appeal should be the administrative record in existence, not some new record made initially in the reviewing court. *Camp v. Pitts,* 411 U.S. 138, 142 (1973). "The complete administrative record consists of all documents and materials directly or

indirectly considered by the agency." *Bar MK Ranches v. Yuetter*, 994 F.2d 735,739 (10th Cir. 1993).

I understand that you believe there are other documents that should be included in the administrative record. I do not agree based on the applicable law and the documents considered by the Department of Education at the time of its decision. Accordingly, I will be submitting to the court the administrative record that was sent to you on May 10, 2002.

Sincerely,

s/*PeterKrumholz*

Peter Krumholz

Assistant United States Attorney

#105 Supplement (to #99 AR) 6/7/02

INDEX to #105 ("SAR")

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court District of Colorado BB 2002 JUN-7 PM 5:02 James R. Manspeaker Clerk by G Dep. Clk}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS
Plaintiff, *pro se*

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

INDEX of Plaintiff Edwards'
Supplemental Designation of the Record

Without any intended or implied endorsement/ adoption of contents or interpretations other than as I Bruce Edwards, plaintiff pro se of above-captioned case ("Edwards" in this Index), or as my wife at my direction, did not personally express or generate; without waiving any of my rights to challenge or to seek authentication/ clarification of data, information or interpretations of said contents; and without intentionally relinquishing any right I might have to similarly supplement or clarify any new or other materials introduced by other parties to this matter subsequent to, or in connection with, this material: I, hereby submit the following listed documents, marked in corresponding, consecutive order in Supplemental Designation of the Record for my case.

Initial Page #	Title/Subject	Date
000001-22	INTENTIONALLY NOT USED to avoid * * * conflicts with * * * EDUC's Administrative Record (Bates Stamp #000001-22) * * *	
000023	EDUC D00 letter dated 1/20/96 and envelope postmarked 1/24/96	1/20/96
000025	EDUC E38 letter dated 4/9/96 and envelope postmarked 4/12/96	4/9/96

Initial Page #	Title/Subject	Date
000027	EDUC E42 letter dated 4/12/96 and envelope postmarked 4/16/96	4/12/96
000029	EDUC E26 letter dated 6/21/96 and envelope postmarked 6/25/96	6/21/96
000031	EDUC envelope postmarked 7/9/96; enclosure(s) not preserved	7/9/96
000032	EDUC G224 letter dated 7/13/96 and envelope * * *	7/13/96
000034	EDUC envelope postmarked 8/12/96; enclosure(s) not preserved	8/12/96
000035	EDUC V70 letter dated 8/15/96 and envelope postmarked 8/19/96	8/15/96
000037	EDUC V70 letter dated 8/24/96 and envelope postmarked 8/28/96	8/24/96
000039	EDUC V70 letter dated 8/28/96 and envelope postmarked 8/29/96	8/28/96
000041	EDUC G224 letter dated 8/29/96, half-legible Promissory Note * * *	8/29/96
000045	EDUC V70 letter dated 9/14/96 and envelope postmarked 9/19/96	9/14/96
000047	EDUC V70 letter dated 10/9/96 * * *	10/9/96
000048	EDUC V70 letter dated 10/11/96 & envelope postmarked 10/16/96	10/11/96
000050	EDUC letter dated 12/26/96 * * *	12/26/96
000051	EDUC G227 letter, (R103) Account Transaction Screen and (R109) Account Profile Screen * * *	1/28/97
000054	EDUC U79 letter dated 8/8/97 and envelope postmarked 8/12/97	8/8/97
000056	EDUC's N18 system letter: Debt Statement, Notice * * * Offset * * * and blank Request for Review form	9/5/97
000062	EDUC's Hearings Branch * * *: cover letter for two post-1/86-loan discharge applications * * *	10/30/97
000075	Edwards' file copy of EDUC * * * "LTR FRM CUST" logged in (LI02)	2/21/98

Initial Page #	Title/Subject	Date
	Collector Note Pad on 4/3/98	
000077	EDUC A50 letter dated 7/24/98* * *	7/24/98
000078	EDUC X68 letter dated 8/13/98* * *	8/13/98
000079	Copy from Edwards' files of EDUC * * * "LTR FROM BORR" logged in (LI02) Collector Note Pad 9/2/98	8/24/98
000080	EDUC Debt Collection Service Regional Director's "SNT LLT" logged 11/12/98 (LI02) * * *	11/12/98
000082	EDUC A50 letter dated 10/29/99 & envelope postmarked 11/11/99	10/29/99
000084	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (LI02) Collector Note Pad 11/15/99	11/11/99
000085	EDUC 457 & 442 letters dated 11/24/99; env'p postmarked 12/1/99	11/24/99
000088	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (LI02) Collector Note Pad 12/21/99	12/10/99
000089	EDUC 443 1etter dated 12/10/99 & envelope postmarked 12/15/99	12/10/99
000091	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (LI02) Collector Note Pad 12/28/99	12/17/99
000092	EDUC 444 letter dated 12/24/99 & envelope postmarked 1/11/00	12/24/99
000094	EDUC 457 * * * letters postmarked 1/13/00 (1 of 2 identical sets)	1/9/00
000096	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (L102) Collector Note Pad 1/26/00	1/21/00
000097	EDUC 445 letter dated 1/16/00 & envelope postmarked 1/24/00	1/16/00
000099	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (L102) Collector Note Pad 2/7/00	1/28/00
000100	Edwards' file copy of EDUC * * *	3/29/00

Initial Page #	Title/Subject	Date
	"RECVD CORR" w/evp logged in (L102) Collector Note Pad 4/7/00	
000104	Edwards' file copy of public record/evp on final disposition of "RECVD CORR" logged 4/7/00 in (L102) Note Pad; "Exhibit A" is 'COMPLAINT RESPNSE' logged in (L102) Collector Note Pad 1/14/00	6/1/00
000111	Edwards' file copy * * * for "REQ ORIG FILE, PCA CANNOT READ P-NOTE" * * * PCA (private collection agency)] logged 6/20/00 in (L102) Note Pad	6/12/00
000114	EDUC 11/4/99 Equifax file request: uninterested party/normal business record [note: not logged in (LI02) Collector Note Pad]	6/20/00
000115	Edwards' file copy of 8/15/00 cover letter/packet * * * logged * * * in 8/29/00 (L102) Note Pad]; * * *	8/15/00
000122	Treasury FMS 8/22/00 response (as 2nd addressee of Edwards' 8/15/00 triple mailing); envelope * * *	8/23/00
000124	EDUC Chicago Service Center * * * "RESP...REFER TO PIC PHONES" (as 3rd addressee of 8/15/00 * * * triple mailing); * * *	8/31/00
000127	Treasury FMS 9/22/00 offset * * * [EDUC logged 10/3/00 (LI02) Note Pad/processed 10/2/00 (1100) Fed Offset Acct Info Screen]	9/22/00
000129	EDUC A50 letter dated 9/26/00 * * *	9/26/00
000131	EDUC 377 letter dated 10/29/00 & envelope postmarked 11/2/00	10/29/00
000133	Edwards' file copy of EDUC * * * "BORR SNT LTR OF DISP" * * * 11/6/00 (LI02) Collector Note Pad	10/30/00

Initial Page #	Title/Subject	Date
000134	EDUC 399 letter dated 1118100 & envelope postmarked 11/13/00	11/8/00
000136	EDUC A58 letter dated 11/8/00 & envelope postmarked 11/14/00	11/8/00
000138	EDUC 400 letter dated 12/14/00 & envelope postmarked 12/18/00	12/14/00
000140	EDUC 377 letter dated 1/4/01 & envelope postmarked 1/5/01	1/4/01
000142	EDUC 399 letter dated 1/18/01 & envelope postmarked 1/18/01	1/18/01
000144	Edwards' file copy of EDUC * * * "SAME AS ABOVE [borr snt ltr of disp]. NO LONGER WITH AG. NO RESP." * * * 2/1/00 (L102) * * *	1/25/01
000145	EDUC U19 letter dated 2/12/01 & envelope postmarked 2/14/01	2/12/01
000147	EDUC counsel * * *("FRCP") 26(g)(1) certification of FRCP 26(a)(1) *Defendant***'s Initial Disclosures* copied to Edwards **[redaction on items *outside* normal custody or control]** & evp for entire disclosure.	**4/26/01**
000153	EDUC FRCP 26(a)(1)(B) B. * * * [CSAC] Exhibit 1: Contact History Report dated December 31, 1992; marked #US000014 * * * 4/26/01	12/31/92
000154	EDUC FRCP 26(a)(1)(B) C. * * *Debt Management Collection System Database and the National Student Loan Data System ["DMCS/NSLDS"] Exhibit 1, (L102) Collector Note Pad printed 4/18/01; marked #US000015 to Edwards 4/26/01	4/18/01
000155	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 1, (L102) Collector Note Pad printed 1/23/01; marked #US000016-25 to Edwards 4/26/01	1/23/01

Initial Page #	Title/Subject	Date
000165	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 2, (L106) Letter History Screen printed 4/18/01 * * * #US000026-28 to Edwards 4/26/01	4/18/01
000168	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 3, (L108) Audit Trail Info[] Screens printed 4/18/01; marked #US000069-70 to Edwards 4/26/01	4/18/01
000170	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 4, (L109) Debt Level Info[] Screen printed 1/23/01 * * * explanatory * * * #US000071-2 * * *	1/23/01
000172	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 5, (L130) Rehabilitation and Consolidation Screen printed 4/18/01; marked #US000073* * *	4/18/01
000173	EDUC FRCP 26(a)(1)(B) C. * ** Exhibit 6, (R101) Research Account Screen printed 4/18/01; marked #US000074 to Edwards 4/26/01	4/18/01
000174	EDUC FRCP 26(a)(1)(B) C. DMCS/NSLDS Exhibit 7, (R103) Account Transaction Screen printed 1/23/01 with explanatory * * * #US000075-6 to Edwards 4/26/01	1/23/01
000176	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 8, (RI04) Payment Detail Screen printed 4/18/01 with explanatory * * * #US000077* **	4/18/01
000178	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 9, (R107) GSL Program Specific Screen printed 1/23/01 with explanatory * * * #US000079-80* * *	1/23/01
000180	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 10, (R109) Account Profile Screen 1 printed 4/18/01 with explanatory * * * #US000081-2 * * *	4/18/01

Initial Page #	Title/Subject	Date
000182	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 11, (R111) Referral History Screen printed 4/18/01; marked #US000083 to Edwards 4/26/01	4/18/01
000183	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 12, (I100) Federal Offset Account Info Screen "for Process Years 1990-2001" * * * 1/23/01 with explanatory * * * #US000084-5 * * *	1/23/01
000185	EDUC FRCP 26(a)(I)(B) C. * * * Exhibit 13: "Printouts from NSLDS showing all Title IV loans * * * 1/23/01; marked #US000086-9 * * *	1/23/01
000189	EDUC A50 letter dated 5/1/01 & envelope postmarked 5/2/01	5/1/01
000191	EDUC 08A letter dated 5/9/01 & envelope postmarked 5/11/01	5/9/01
000193	EDUC W41 letter dated 5/17/01 & envelope postmarked 5/18/01	5/17/01
000195	Edwards' file copy of response to 5/1 & 5/9/01 collection contractor demands; [* * * post-4/18/01 (LI02) CollectorNote Pad entries not disclosed to Edwards* * *]	5/22/01
000196	EDUC 5/29/01 counsel letter with legible Promissory Note * * * to Edwards/postmarked 6/5/01	5/29/01
000200	EDUC FRCP 26 & 33 Defendant'sResponses to Plaintiff's Interrogatories (No. 1-33 * * * redaction]. Postmarked 6/29/01	6/25/01
000217	Edwards' file copy of Plaintiff's Objections to Defendant's Responses to Plaintiff's Interrogatories (No. 1-33 * * * redaction]	7/7/Ol
000226	Edwards' file copy 7/27/01 service: Plaintiffs Interrogatories #34-50	7/27/01

Initial Page #	Title/Subject	Date
	* * * Requests for Documents and Complete Legible Initial Disclosures and Requests for Admissions [* * *redaction]	
000240	EDUC written, as follow-up of 8/27/01 verbal, objections and request * * * amend interrogatories #34-50; postmarked 8/28/01	8/28/01
000242	Edwards' follow-up to 8/27/01 EDUC * * * verbal request * * * redaction]	8/28/01
000247	EDUC Defendant's Answer to Plaintiffs Requests for Admissions (dated 7/27/01) * * * redaction]. Postmarked 9/4/01	9/4/01
000256	EDUC Defendant's Responses to * * * Interrogatories (#34-50* * *) and Requests for Production * * * (#1-25 served 7/27/01) * * *	9/7/01
000278	EDUC counsel hard copy * * * faxed declaration page of 9/7/01 mailing***	9/10/01
000281	EDUC FedEx delivery/cover of partial * * * as FRCP 26 & 33/34 EDUC 9/10/01 production * * *	9/10/01
	4/20-28/92 Review of CSAC	-
000283	GSL Tape Dump Procedures* * *	7/10/92
000303	EDUC 9/10/01 production: * * * 1/94-2/94 Review of Data Supporting CSAC's Monthly Claims & Collections * * *-interim report	6/10/94
000326	EDUC 9/10/01 prod* * * 1/98-2/98 Examination of Operations, Systems, Organization & Management of EdFund and CSAC-report	8/14/98
000338	Edwards' file copy (w/mis-dated 9/10/01 cert. of svc) of Objections to Sufficiency of Defendant's * * * Admissions * * * redaction]	9/12/01

Initial Page #	Title/Subject	Date
000345	EDUC U19 letter dated 9/17/01 & envelope postmarked 9/19/01	9/17/01
000347	Edwards' file copy on reissuing discovery objections * * *	10/22/01
000349	EDUC supplemental production as FRCP 26/3, [redaction * * * request #15 and as noted * * * 4/26/01] * * 8	9/18/01
000432	EDUC FRCP 26 trial exhibit disclosures * * * [see 4/26/01 note on redaction]; postmarked 1/10/02	1/10/02
000454	Edwards' certified 1999 * * * High School Diploma, Aurora, Colorado	12/99
000455	Edwards' FRCP 26 cover/receipt for * * * trial exhibits (1-114) plus hard copy of exhibit #49 * * * residential rental agreement dated 7/11/92	1/14/02
000457	EDUC Defendant U.S. Department of Education's Answer to Plaintiffs' Complaint dated 3/19/01* * *	3/19/01
000469	Edwards' enlarged (120-125%) Promissory Note * * * copy of copy received 6/6/01 * * *	6/4/85

SAR 51-3: 1/28/97 History letter

{DCS} *Diversified Collection Services, Inc.*
P.O. Box 5700, 555 McCormick St.,
San Leandro, CA 94577-0757 Main Line (800) 766-7617

January 28, 1997

BRUCE EDWARDS
1001 EMPORIA ST
AURORA, CO 80010-3825

RE: Diversified Collection Services
CLAIM OF: United States Department of Education
ACCOUNT NO.: * * *[SSN] BALANCE: $5,701.34

Dear BRUCE EDWARDS:

You have requested an itemization of your account. The enclosed figures accurately represent your account history according to our records.

We will hold your account for ten (10) days from the date of this letter to give you the opportunity to evaluate this information and to make arrangements to repay this obligation.

Failure to respond within the allotted time may result in your account being referred back to the U.S. Department of Education for litigation through the U.S. Department of Justice. The Internal Revenue Service may also be authorized to withhold any income tax refunds. Federal law requires that we inform you this is an attempt to collect a debt and any information obtained will be used for that purpose.

If you should have any questions in regards to this matter, you may contact: Diversified Collection Services PO Box 5026 HAYWARD CA 94540 (800) 766-7617

Encl.

G227

[2/5/97 With an effective date in 1993 regarding a promissory note signed in 1986[sic] which was not executed for requested amount—loan was not received! Please update your records and advise all parties to whom you report. (See my August 1996 communication.) Also, kindly cease and desist all further attempts to collect this non-existent loan.]

(R109) ACCOUNT PROFILE SCREEN 1
REGION: 09 ACCT OWNER: AG480 01/28/97
COLL NUM: 99999 16:06
ACCT NO: S * * *[SSN]
ACCT NAME: EDWARDS BRUCE
REQUESTOR: EA98108 AS OF (MM/DD/YY):
01/28/97
-ORIGINAL PRINCIPAL BALANCE:2,666.94
* * *
-TOTAL INTEREST ACCRUED:1,885.35
* * *
-FEES:
LESS CREDITS: SUBTOTAL: 4,552.29
* **
SUBTOTAL:
CURRENT TOTAL DUE: 4,552.29
PROJECTED/ACTUAL COLL AGENCY FEES:1,138.07
TOTAL PAYOUT: 5,690.36
PF13-R101 14-R102 15-R103 16-R104 17-R105 * * *

(R103) ACCOUNT TRANSACTION SCREEN 01/28/97
REGION: 09 ACCT OWNER: AG480 16:05
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS BRUCE
DATA HAS BEEN ARCHIVED: ( )
ED BALANCE: 4,552.29 PROJ/ACT CA: 1,138.07
CA BALANCE: 5,690.36
TOTAL PMT: 0.00 NET ADJ TRANS: 0.00
PAGE 1 OF 1
EFFECTIVE DATE 06/14/93 TOTAL
PAYMENT 1,112.05-
TRAN TP: IA RS: ___ INSTRUMENT
NUMBER: 0000000000
SEQ NUMBER 000130 IN TP ___ ORIG-B.
POSTCL IAP
SRC NBR IAP CRED SITE ED POSTING
DATE 06/26/93 S: _
PF13-R101 14-R102 15-R103 16-R104 17-R105 * * *

SAR 100-2: 3/29/00 Colo. Admonition

{STATE OF COLORADO
1876
NIL SINE NOMINE}

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

KEN SALAZAR Attorney General
BARBARA MCDONNELL Chief Deputy Attorney General
ALAN J. GILBERT Solicitor General

STATE SERVICES BUILDING
1525 Sherman Street 5th Floor
Denver, Colorado 80203

Phone (303)866-4500
FAX (303) 866-5691

March 29, 2000
Certified Mail # P 784 069 996

Mr. Todd Ruzicka
Director of Quality Control
Van Ru Credit Corporation
10024 Skokie Blvd
Skokie IL 60077

RE: Letter of Admonition - Complaint by Bruce Edwards
Section 12-14-105 (3)(a) C.R.S.
Section 12-14-109 (1)(f) C.R.S.
Section 12-14-109 (2) C.R.S.
Colorado Collection Agency License # 101557

Dear Mr. Ruzicka:

This office has reviewed the consumer complaint filed against your collection agency by the above-mentioned consumer, your response, and any other investigatory information gathered. The consumer disputed the debt the agency was attempting to collect. The consumer also stated that the agency failed to provide requested verification of the debt. Your agency responded by letter dated January 13, 2000 from Director of Quality Control Todd Ruzicka. The response denied any improper activities, stating that the original creditor provided the consumer with verification of the debt on numerous occasions.

Your agency notes indicate you received the consumer's written dispute of the debt November 15, 1999. It appears that this dispute letter was based on the Department of Education's notice to the consumer dated October 29, 1999. Your agency notes do not indicate Van Ru Credit Corporation sent verification to the consumer. Your agency's validation notice dated November 24, 1999 did not address the consumer's request for verification, but did advise the consumer "if you do not dispute the validity of this debt, or any portion of this debt, in writing, within 30 days after receipt of this notice, we will assume it is valid. If you do dispute this debt, in writing, within the 30 day period, we will obtain verification of the debt or a copy of the judgment and will mail a copy of such verification or judgment to you." The second notice from your agency, also dated November 24, 1999, indicated your agency's receipt of the consumer's dispute of and request for validation of the debt. This second notice advised the consumer to contact your agency by telephone. The third notice dated December 10, 1999 stated that the consumer had "ignored all previous notices requesting that you honor your obligation to the United Stated Department of Education." Your agency notes of December 21, 1999 indicate your receipt of the consumer's second and third letters of dispute and request for verification dated December 10, 1999 and December 17, 1999 respectively. In addition, your agency notes indicate your continued collection efforts from November 30, 1999 through at least January 12, 2000. I placed a telephone call to you on March 28, 2000 and verified the account is closed and returned to the creditor effective February 1, 2000.

The Colorado Fair Debt Collection Practices Act (CFDCP A or the Act) § 12-14-1 09 (2) states "If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in paragraph (c) of subsection (1) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original

creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of judgment or the name and address of the original creditor and mails a copy of such verification or judgment or name and address of the original creditor to the consumer." In your reply dated January 13, 2000, you stated that the original creditor had provided the consumer with debt verification several times. This does not relieve the collection agency of its legal obligations under §12-14-109 (2) of the Act. Your agency did not provide the consumer with the requested information upon timely receipt of written request and your agency continued communicating with the consumer. This is a violation of§12-14-109 (2) of the Act.

The CFDCPA §12-14-105(3)(a), (b) and (c) states "(a) If consumer notifies a debt collector or collection agency in writing that: (I) The consumer wishes the collection agency to cease contact by telephone at the consumer's place of employment, then no such further contact by telephone shall be made; (II) The consumer refuses to pay a debt or the consumer wishes the collection agency to cease further communication with the consumer, then the debt collector or collection agency shall not communicate further with respect to the debt, except: (A) To advise the consumer that the collection agency's further efforts are being terminated; (B) To notify the consumer that the collection agency or creditor may invoke specified remedies which are ordinarily invoked by such collection agency or creditor; or (C) Where applicable, to notify the consumer that the collection agency or creditor intends to invoke a specified remedy permitted by law. (b) If such notice from the consumer is made by mail, notification shall be complete upon receipt. (c) In its initial written communication to a consumer, a collection agency shall include notification of the consumer's rights under this subsection (3). If such notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact." Your initial

notice does not carry this required information. This is a violation of §12-14-105(3) (c) of the Act. You must immediately change your notices to comply with current Colorado law.

The CFDCP A § 12-14-109(1) (f) and (g) state that the validation notice must contain the following information: "(f) That collection agencies are licensed by the Collection Agency Board. The address of the Board shall also be disclosed." and "(g) That consumers shall not send payments to the Collection Agency Board." Your initial notice dated November 24, 1999 does not include section (g). This is a violation of §12-14-109(1)(g) of the Act. In addition, your advisory required by § 12-14- 109(1)(f) should reference the Collection Agency "Board". This is not, however, a basis for this admonishment. You must immediately change your notices to comply with current Colorado law.

The collection Agency's actions do not warrant a formal administrative hearing for disciplinary action but are not correct. As a result, this letter of admonition is issued pursuant to §12-14-130(10), C.R.S. (1998).

You may appeal the issuance of this letter of admonition by filing a written request for a hearing with the Collection Agency Board. The request must be received within forty (40) days of the date of this letter and mailed to the address printed on this letter. A formal complaint will then be issued and the case will be set for a full disciplinary hearing.

Sincerely,

s/*Laura E.Udis*
LAURA E. UDIS
Executive Director
Collection Agency Board
(303) 866-5706
(303) 866-5691 (FAX)

cc: Bruce Edwards

SAR 104: 6/1/00 Admon'n Withdrawal

{STATE OF COLORADO
1876
NIL SINE NOMINE}

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

KEN SALAZAR Attorney General
BARBARA MCDONNELL Chief Deputy Attorney General
ALAN J. GILBERT Solicitor General

STATE SERVICES BUILDING
1525 Sherman Street 5th Floor
Denver, Colorado 80203

Phone (303)866-4500
FAX (303) 866-5691

June 1, 2000

~~Mr. Todd Ruzicka Director of Quality Control~~
~~Van Ru Credit Corporation~~
~~10024 Skokie Blvd Skokie IL 60077~~

RE: Withdrawal of Letter of Admonition
Complaint of Bruce Edwards

Dear Mr. Ruzicka:

The March 29, 2000 letter of admonition issued to your agency in connection with the complaint of Bruce Edwards is hereby withdrawn. Van Ru Credit Corporation appealed the leter of admonition. Rather than proceeding to an evidentiary hearing involving a new determination of whether any violations of the Colorado Fair Debt Collection Practices Act occurred, your agency and I agreed to enter into a Stipulation. Withdrawal of the admonishment was a condition of the stipulation.

A copy of the stipulation is being provided to your counsel, Lawrence Laskey, and to Bruce Edwards under cover of this letter.

Sincerely,

s/*Laura E. Udis*
LAURA E. UDIS Executive Director
Collection Agency Board
(303) 866-5706 (303) 866-5691 (FAX)

cc: Lawrence Laskey, Esq.
✓ Bruce Edwards
* * * [STIPULATION]; [Ex. A (*see* 1/13/00 Van Ru letter, p 181 *supra*; Ex. B (*see* 12/10/99 letter, p. 174 *supra*)]

SAR 153: 12/31/92 CSAC Contact Hist.

FEB. 01 2001 2:18 PM EDFUND POST DEFAULT SERVI
916 526 7209 P. 2

***[account in other person's name on left side of page]
SSN: * * * D14
JOB NAME: JSAJ220F DATE: 12/31/92
REPORT: JSAR220F

CALIFORNIA STUDENT AID COMMISSION
CONTACT HISTORY REPORT

SSN: [SSN] EDWARDS, BRUCE
*623 E. BROADWAY 1, LONG BEACH, CA, 90802
310-432-6398

DATE	CLK	CO	INDX	DESCRIPTION
120892	BCH	CAR	1000	CANCEL/RETRN .00 25 B
120292	BCH	CAR	1000	CANCEL/RETRN .00 .25 B
113092	DCS	DDU		
093092	BCH	M1	1010	CREDIT BUREAU – SUBROGATED
092992	BCH	CLM	0000	FEDERAL SUB//LOANS SENT TO FED
012292	DCS	DDS		
120691	DCS	DDS		
120491	BCH	ADR	1000	
112091	242	UO	0000	BAD ADDRESS
110891	DCS	DDS		
101791	BCH	LTR	0000	FTU OFFSET LETTER FTBLETTR 005
101091	DCS	DDS		
100791	209	U0	0000	BAD ADDRESS
091291	DCS	DDS		
091191	BCH	LTR	0000	IRS OFFSET LETTER

IRSLETTR 005

081691	DCS	DDS		
071891	DCS	DDS		
070591	DCS	DDS		
060791	DCS	DDS		
050891	DCS	DDS		
040491	DCS	DDS		
030591	DCS	DDS		
020691	DCS	DDS		
011591	DCS	DDS		
122790	242	UO	0000	BAD ADDRESS
121290	DCS	DDS		
111290	DCS	DDS		
110490	BCH	LTR	0000	FTU OFFSET LETTER

FTBLETTR 004

100990	DCS	DDS		
092490	BCH	LTR	0000	IRS OFFSET LETTER

IRSLETTR 004

091790	BCH	ADR	1000	623 E BROADWAY 1

LONG BEACH CA90802

080890	DCS	DDS		
071790	DCS	DDS		
062690	DCS	DDS		
043090	BCH	M1	1010	

CREDIT BUREAU – CLAIM

043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		

043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	BCH	ASN	1010	ASSIGNMENT
				2666.94 24 F
121389	224	DOU	0000	
121389	224	S4	0000	213-432-6398 MACH
113089	224	S4	0000	213-432-6398 MACH
103189	BCH	LTR	0000	SPECIAL COLLECTION
				LETTER BILL0632 001

[SSN] *E14 * * * [repeat heading]*

DATE	CLK	CO	INDX	DESCRIPTION
102789	BCH	LTR	0000	FTU OFFSET LETTER
				FTBLETTR 003
092789	BCH	LTR	0000	IRS OFFSET LETTER
				IRSLETTR 002
062189	262	DDU	0000	
062189	262	S4	0000	213-432-6398
040789	262	ADR	1000	2265 EARL;
				LONG BEACH; CA; 90806
033189	BCH	ASM	1010	SPECL ASGNMT
				2666.94 04 F
102688	BCH	LTR	0000	FTU OFFSET LETTER
				FTBLETTR 002
101388	BCH	CAR	1000	CANCEL/RETRN
				.00 15 B
100388	BCH	ASN	1010	CANCEL/RETRN
				2666.94 15 F
092488	BCH	LTR	0000	IRS OFFSET LETTER
				IRSLETTR 001

032988 236 MF 0000 8700766

EDWARDS BRUCE

092887 BCH ADR 1000 623 E BROADWAY 1;

LONG BEACH; CA; 90802

061987 BCH BC 1000 PCLM CANCEL 801178

00 R 1 .00 .00 .00

040287 214 M1 0000 C2038101/CA

040287 214 LP 0000 870316 801178

032687 230 CC 0000

032687 230 A3 0000 REF 1&2

032687 230 R7 0000 REF1#213 436 4523

032687 230 B1 0000

032587 230 R4 0000 REF3#213 591 4544

032587 230 R3 0000 REF2#213 636 7442

032587 230 R1 0000 REF 1

032587 230 B1 0000

032487 230 B1 0000

031987 237 CLM 1010 REJECT CLAIM 801178

870319 0191

031987 237 M1 1010 NO CM MARY

031987 237 JJ 1010 870316 801178

031987 252 M1 1010 C2038101/CA

031987 252 LC 101 870316 801178

022687 CON ADR 100 PO BOX 9821

LONG BEACH CA90810 21343263

{US000014}

SAR 170: 1/23/01 (L109) Debt Level Info.

Page: 1 Document Name: untitled
(L109) DEBT LEVEL INFORMATION SCREEN ED0703
REGION: 09 ACCT OWNER: AG524 01/23/01
COLL NUM: 99999 13:42
ACCT NO: S * * *[SSN] DEBT LOC CODE: AG524
DEBT NO: G199309030022801 TYPE DEBT: GSL
ACCT NAME: EDWARDS, BRUCE
GUARANTY AGENCY: CA706 CALIFORNIA
ORIGINATING LENDER:
801178 B OF A TRUSTEE C/O CMSC
ORIGINATING SCHOOL:
TRAVEL AND TRADE CAREER INSTITUTE
CLAIMING LENDER AND ADDRESS:
801178 B OF A TRUSTEE C/O CMSC
PO BOX 92025 LOS ANGELES CA 90009-2025
COMAKERS: ___
CURRENT PRINCIPAL: 2,666.94
CURRENT INTEREST: 2,511.07
CURRENT PENALTY: .00 CURRENT
ADMIN: .00
CURRENT FEES: .00 ED
BALANCE: 5,178.01
PROJ/ACT CA : 1,294.50 CA
BALANCE: 6,472.51
REHAB/CON FEE: 957.93 REHAB/CON
BAL: 6,135.94
RATE: 8.00% CREDIT BUREAU
STATUS: CO
FIRST REPORTED: 08/29/93 LAST
REPORTED: 05/28/94
FDP FLAG: N ACCT AWG FLG: N DOJ
FLAG: N
TOP STAT: 01-5
ICRP: ___
PF13-L101 14-L102 15-L103 16-L104 17-L105 18-L106 19-
L107 20-108 21-L109 22-L1
DATE: 1/23/01 TIME: 2:42:50 PM **{US000071}**

SAR 179: "R107" explanatory sheet

(R107) GSL PROGRAM SPECIFIC SCREEN 08/01/97
REGION: 04 ACCT OWNER: ED113 13:14
ACCT NO: 999999999 ACCT NAME: DEBTOR DAN
PREV NAME: ___ STUDENT NAME: ___
STUDENT ID: 0 PAGE 1 OF 1
DEBT NO: G199304050022701 *Identification number for specific loan*
DATE ENT: 05/25/93 *Date ED accepted assignment from guarantor*
PRINCIPAL: 2,857.58 INTEREST: 73.68 *Principal & interest posted by guarantor when loan assigned to ED*
PENALTY: ___ ADMIN: ___ FEES: ___
LENDER: 899999 ORGAGY: KD620 SID: 001944 *lender, guarantor, and school ID numbers*
LNGUARDT: 9/18/89 DEFTDTE: 01/15/91 *Loan guarantee & default dates*
LOANTPE: STAF *Loan type: STAF = Stafford SLS, PLUS, CON*
CBOCCDATE: 11/01/91 *guarantor first reported to credit bureaus*
GA BAL DATE: 11/01/93 *date guarantor last posted accrued interest*
ORGCLMPAYDTE: 10/31/91 *Date guaranty claim paid*
PRINPDLENDER: 2,625.00 *Principal paid to lender in guaranty claim*
INTPDLENDER 186.28 *Non-cap'd Interest paid to lender in guaranty claim* INTCAPBYGA: 286.28 *total interest cap'd by lender + by guarantor*
AMTCOLBYGA: 425.00 *Amount collected by guarantor*
LASTPDGA: 07/29/93
ORGSOLDT: 12/01/92 LITIND: N JUDMTDT: ___
JUDMTEXPDT: ___ WITHDRAWAL: 6/11/90
DISB AMOUNT: 2,625.00 DISBDTE: 12/27/89
RATE: 8.00% *Interest rate on loan when assigned to ED*

R107 screen displays information regarding history of Guaranteed Student Loan/Federal Family Education Loan

{US000080}

SAR 183: 1/23/01 (I100) Fed. Offset Info.

Page: 1 Document Name: untitled
(I100) FEDERAL OFFSET ACCOUNT INFO SCREEN
FMS IND: A A/I: ___ ED0703 01/23/01
ACCT NO: S * * *[SSN] 13:40
PROCESS YEAR: 2000
SUBAGENCY: 90 SAN FRANCISCO SERVICE CENTER
PHONE: (800) 621-3115* * *
SUBAGENCY SELECTIONS: ___
NAME: BRUCE EDWARDS
DEBT NO: * * *[SSN]
CERTIFICATION IND: R

TOP ORIGINAL BALANCE:	$5,169.94
TOP CURRENT BALANCE:	$4,945.27
LAST DECREASE DATE: ___	
DECREASE AMOUNT:	$.00
LAST INCREASE DATE: ___	
INCREASE AMOUNT:	$.00
REPLACEMENT DATE: ___	
REPLACEMENT AMOUNT:	$.00
REFUND DATE DATE: ___	
ED/GA REFUND AMOUNT:	$.00
REVERSAL DATE: ___	
REVERSAL AMOUNT:	$.00

OFFSET DATE: 09/22/2000
PROCESS DATE: 10/02/2000
TOP OFFSET AMOUNT: $234.32

6 – FEDERAL FUNDS HAVE BEEN OFFSET

ACCOUNT NOT CERTIFIED; NO ACTION ALLOWED

PF9-NEXT YEAR 10-LAST YEAR 3-EXIT PF13-I100
14-I110 15-I120
DATE: 1/23/01
TIME: 2:41:21 PM

{US000084}

SAR 379-80: Request For Review form

REQUEST FOR REVIEW

NAME: ___ SSN: ___ CURRENT ADDRESS: ___

If you object to offset against your Federal refund and/or payment for the student loan described in the Loan Statement or notice, you can use this form to request a review or hearing. If you object **ONLY** because you believe you cannot afford to pay this debt, but you wish to arrange payment terms, **DO NOT USE THIS FORM. INSTEAD,** write or call the Contact listed on the Loan Statement.

IMPORTANT. You should request and review copies of the records evidencing your loan before you complete this statement. See the Notice of Proposed Offset of Federal Income Tax Refund or Other Payment for instructions on how to request these records.

I. Check ONLY ONE of the following:

A. ( ) I want a review of my objection based on this written statement and the record in my loan file. **COMPLETE PARTS II AND IV OF THIS FORM.**

B. ( ) I want an in-person hearing in the city shown on the Loan Statement to present my objection. I understand that I must pay my own expenses to appear for this hearing. **COMPLETE PARTS II, III, AND IV OF THIS FORM.** Provide a telephone number where you can be reached during the day: ___

C. ( ) I want a hearing **by telephone**. **COMPLETE PARTS II, III, AND IV OF THIS FORM.** Provide a telephone number where you can be reached during the day: ___

II. Check the objections that apply. **ENCLOSE** the documents described here (if you do not enclose documents, ED will consider your objections based on the information on this form and the records in ED's file on this loan):

1. ( ) I do not owe the full amount shown because I repaid some or *all of this* loan. **ENCLOSE** copies of the front and back of checks, and copies of money orders and receipts for payments made on the loan.
2. ( ) I am making payments on this loan as required under the repayment agreement I reached with the holder of the loan **ENCLOSE** copies of repayment agreement and front and back of payment checks.
3. ( ) I filed for bankruptcy and my case is still open. **ENCLOSE** copies of **any court** document showing name of court and case number.
4. ( ) This loan was discharged in bankruptcy. **ENCLOSE** copies of discharge order and the schedule of debts filed with the court.
5. ( ) I am totally and permanently disabled – unable to work and earn money because of an impairment that is expected to continue indefinitely or result in death.
6. ( ) This is not my Social Security Number, **and I** do not owe this loan. **ENCLOSE** copies of your Driver's License or other identification issued by a government agency and your Social Security Card.
7. ( ) I believe that this loan is not an enforceable debt in the amount stated because: **(EXPLAIN** any other reason you object to the collection of this loan amount by offset against your Federal refund and/or payment. Be as specific as possible. **ENCLOSE** any records that support your reasons.
8. ( ) I used this loan to enroll in ___ (school) on or about __/__/__, and I withdrew from school on or about __/__/__. I believe that I am owed, but have not been paid, a refund from the school of $___. **ENCLOSE** any records you have showing withdrawal.
9. ( ) I used this guaranteed student loan to enroll in ___ (school) on or about __/__/__, and I was unable to complete my education because the school closed.
10. ( ) I had no high school diploma or GED when I enrolled at ___ (school) with this guaranteed student loan. The school improperly determined my ability to

benefit from the training offered and I was not able to obtain a job in the occupation for which it trained me.

11. ( ) When I borrowed this guaranteed student loan to attend ___ (school), I had a condition (physical, mental, age, criminal record) that prevented me from meeting State requirements for performing the occupation for which it trained me.

12. ( ) I believe that ___ (school) without my permission signed my name on the loan application, promissory note, loan check or electron funds transfer (EF) authorization.

[If you check 9, 10, 11, or 12, you will be asked to provide additional information in order to avoid offset; parent borrowers should answer 8 – 12 about the student.]

III. IF YOU WANT AN IN-PERSON OR TELEPHONE HEARING, YOU MUST COMPLETE THE FOLLOWING:

The loan records and documents I submitted to support my statement in Part II do not show all the material (important) facts about my objection to collection of this loan. I need a hearing to explain the following important facts about this loan: (**EXPLAIN** here the additional facts that you believe make a hearing necessary. Use a separate sheet of paper if necessary. If you have already fully described these facts in your response in Part II, **WRITE HERE** the number of the objections in which you described these facts ___.)

Note: If you do not receive an in-person or telephone hearing, you objection will be reviewed, based on information and documents you supply with this form and on records in your loan file.

IV. I state under penalty of perjury that the statements I have made here are true and accurate to the best of my knowledge.

Date: _____

Signature: _____

SAR 391-6: "L109" explanatory pages

10/01/92 D-COL-003

* * *[(L109) Debt Level Information Screen keyed sample]

FIELD CONTENT-L109-DEBT LEVEL INFORMATION

(M) indicates a mandatory field, (O) indicates an optional field, (D) indicates a display only field.

s	Field Name	Definition
1	REGION CODE (D)	Two-character region ID. * * * 09 – San Francisco
2	DEBT LOC CODE (D)	Five=character location code of the debt. Display only. The first two characters must be alphabetic: AG = Collection Agency ED = Department of Education
3	ACCT NO (M)	The 10-character account ID. "S" or "E" followed by nine numbers. S = Social Security Number E = Employer Identification Number
6	DEBT NUMBER (D)	The 16-character debt ID; one letter followed by 15 numbers. G - GSL F - FISL N - NDSL Digits 2 - 5: Fiscal Year Digits 6 - 7: Region code = where the debt was originally input into the system. 00 - HQ 04 - Atlanta 05 - Chicago 09 - San Francisco Digits 8 - 14: Debt Number (Old Claim Number) Digits 15 - 16: Debt Sequence Number (Old Sequence* * *

11	ORIGINATING LENDER (D) OR ORIGINATING SCHOOL [NSDL debt]	The code and name of the originating lender for a GSL or FISL debt. Display only. * * *[NSDL debt description] * * *
13	CLAIMING LENDER AND ADDRESS (D)	Name and address of the originator of the debt. For NDSL loans, the screen displays the field as CLAIMING SCHOOL. For GSL loans, the screen displays the field as CLAIMING AGENCY. Display only.
14	DATE DEBT ESTABLISHED (D)	The date that the debt was turned over to ED and from which the statute of limitations is calculated. For GSL = ORIG-SOL-DATE, for NDSL = CERT-DATE, and for FISL = CLAIM-PAY-DATE. Display only. * * *
24	FIRST REPORTED (D)	The date on which the debt was first reported to a credit bureau. Display only.
25	LAST REPORTED (D)	The date on which the debt was last reported to a credit bureau. Display only.
26	FEDERAL DEFAULTER FLAG (D)	A flag indicating whether the account is a Federal Defaulter Case. Display only.
27	DOJ FLAG (D)	A flag indicating whether the account is a DOJ case. Display only.
28	IRS FLAG (D)	A flag indicating the account's IRS status. Display only.

SAR 415: "I100" explanatory pages

FEDERAL OFFSET ACCOUNT INF SCREEN (I100)

1) FMS IND: _ (D) Display Only Field

This one-character field is an indicator for TREASURY' purposes only. The new TOP formats contain a field to indicate whether an account was previously certified by ED in the 2000 Process Years forward, and this indicator is used strictly by TOP programs for tracking purposes only. For the 2000 Process Years forward, TOP programs will systematically populate ED accounts with either a blank, an "A" (for Add), or a "Y" (for Replace). For the 2001 Process Years forward, TOP programs will populate GA accounts with an "A" or a "Y". For all prior years, this field will be blank. This indicator does not relate to whether an account is currently certified in the TOP.

2) A/I: _ (D) Display Only Field

This one-character field indicates the current status of a certified account. Beginning with the 2001 Process Year, this field will contain an "A" (for Active or Certified Account) or an "I" (for Inactive or Decertified Account). * * * For all years prior to 2001, this field will be blank. This indicator will systematically change, abased on ACTION (see 7 below) updates.

3) Account Number: (M) Mandatory Field

Enter borrower's SSN * * *

4) Subagency: (D) Display Only Field

The agency (ED or GA) that has certified the account for offset. If the Subagency Code is 40, 50, or 90, the debt is held and serviced by ED. * * *

5) Process Year: (M) Mandatory Field

The processing year in which the Federal funds may be/were taken. * * * Currently, offset/reversal information is available from 1991 processing year forward.

6) Phone: (D) Display Only Field * * *

7) Action (M) Mandatory Field

(A To Activate Account)

(I To Inactivate Account) (D To Remove A Debt)

The actions in this field have been changed to accomodate the new TOP formats. Some of you only have the ability to view an account. This is where (providing you have clearance) you would enter an "A", "I", or "D". In all cases, staff should only take the appropriate actions on an account that is currently certified; i.e., the account indicates an "A" or "I" in the A/I field described in (2) above for the current Process Year. If a user attempts an action on (i.e., to Activate or Inactivate an Account or Remove a Debt) an an account that is not currently certified (i.e., the account indicates a blank in the A/I field) or attempts an action on an account for a previous Process Year instead of the current Process Year, an error message will appear indicating "Account Not Certified; No Action Allowed". * * *

8) Subagency Selections: (O) Optional Field

If more than one agency has certified an account in a given processing year, all of the Subagency Codes will appear hear * * *

9) Name: (D) Display Only Field

The borrower's name.

10) Debt Number: (D) Display Only Field

The new TOP formats require a Debt Number, which will be indicated in this field, for reporting purposes to TREASURY. For ED accounts, this number is systematically derived using 05, plus the SSN of the account. * * * NOTE: This Debt Number is used for TREASURY reporting purposes only. It does not relate to the ED Debt Numbers that are assigned to every debt that enters ED's database.

11) Certification Indicator: (D) Display Only Field

This field contains data for ED accounts beginning with processing year 1999 and forward. For ED accounts, it relates to whenever a TOP 65-day notice was sent. Valid values are:

R – Recertified. ED account was selected for recertification and was certified in the previous year(s). New TOP 65-day notice was not sent.

C – Certified. ED account was selected for certification and a (new) TOP 65-day ntoice was sent.

Blank – Processing year prior to 1999 or ED account that was not selected for certification. * * *

12) TOP Original Balance: (D) Display Only Field

If certified, ED or GA amount actually submitted to Treasury on Certification/Recertification tape. Represents principal and interest of certified debts. Remains constant regardless of actions. If not certified, represents amount submitted in pre-certification process. For GA accounts * * *

13) TOP Current Balance: (D) Display Only Field

Represents current principal and interest balance available for offset. This amount is reduced for offsets, payments and other adjustments, and increased due to interest accural and reversals performed for the 2000 processing year forward for ED accounts and 1999 processing year forward for GA accounts.

14) LAST DECREASE DATE: (D) Display Only Field

Date when last decrease amount was reported to Treasury.

15) LAST DECREASE AMOUNT: (D) Display Only Field

Cumulative decrease amount(s) reported to Treasury by ED or a GA for payments and other adjustments to reduce the certified amount. This amount(s) is subtracted from the TOP CURRENT BALANCE.

16) LAST INCREASE DATE: (D) Display Only Field

Date when last increase amount was reported to Treasury.

17) INCREASE AMOUNT: (D) Display Only Field

Cumulative increase amount(s) reported to Treasury by ED or a GA for interst accrual to increase the certified amount. This amount(s) is added to the TOP CURRENT BALANCE. As a result, it is possible that the TOP CURRENT BALANCE may be greater than the TOP ORIGINAL BALANCE.

18) REPLACEMENT DATE: (D) Display Only Field

Date when last replacement amount was reported to Treasury.

19) REPLACEMENT AMOUNT: (D) Display Only Field

Last replacement amount reported by ED or a GA to replace the certified amount. This amount is reflected in the TOP CURRENT BALANCE.

20) REFUND DATE: (D) Display Only Field

The most recent processing date of a refund reported by either ED or a GA.

21) ED/GA REFUND AMOUNT: (D) Display Only Field

Total amount (cumulative) of all refunds reported by either ED or a GA

22) REVERSAL DATE: (D) Display Only Field

The effective date of the last reversal (refund) performed by Treasury.

23) TOP REVERSAL AMOUNT: (D) Display Only Field

Total amount (cumulative) of all reversals (refunds) performed by Treasury. [Treasury does reversals for a number of reasons, i.e.: bankruptcy notification, death, an error in processing, injured spouse * * *

24) OFFSET DATE: (D) Display Only Field

The effective date of the last Treasury offset.

25) PROCESS DATE: (D) Display Only Field

Date Treasury offset tape was processed by ED.

26) TOP OFFSET AMOUNT: (D) Display Only Field

Total amount (cumulative) of all the Treasury offsets taken during the process year.

Below these fields, in the middle of the screen, additional data is displayed.

27) ACCOUNT STATUS: (D) Display Only Field

Describes the current status of the account in TOP. The meaning of the status is displayed and can vary (as shown below) depending on when the account is accessed.

* * * 6 = Federal funds have been offset. * * *

[NOTE: see also #7 above]

#107 Objections (to Supp.) 6/21/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court District of Colorado BB
2002 JUN 21 PM 1:44 James R. Manspeaker Clerk by s/D Dep. Clk

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

Defendant's Objection to Plaintiff's Supplementation of the Administrative Record

Defendant United States Department of Education, by and through United States Attorney John W. Suthers and the undersigned attorney, hereby files this Objection to Plaintiff s Supplementation of the Administrative Record.

1. Defendant submitted an administrative record for this case on May 15, 2002. The record was certified by Harold Jenkins, Assistant General Counsel for Post-secondary Education in the Office of the General Counsel. Mr. Jenkins certified that the record submitted on May 15, 2002, were copies of the documents compiled for use in reviewing Mr. Edwards' administrative challenge to the enforceability of his student loan debt.

2. On June 7, 2002, Plaintiff Bruce Edwards submitted a Supplemental Designation of the Record, comprising 472 pages, and which includes hundreds of pages that were created long after the Department of Education issued its final agency decision on August 31, 2000. *See* Index of Plaintiff Edwards' Supplemental Designation of the Record, Nos. 000127 000457.

3. Mr. Edwards seems to assume that because the Department of Education previously submitted documents as part of its initial disclosures in this litigation, those documents must necessarily be included in the administrative record. See Plaintiff s Brief Submitted with Supplementation, at 3. That is not so. The focal

point for judicial review of an APA appeal should be the administrative record *in existence,* not some new record made initially in the reviewing court. *Camp v. Pitts,* 411 U.S. 138, 142 (1973). "The complete administrative record consists of all documents and materials directly or indirectly considered by the agency." *Bar MK Ranches v. Yuetter,* 994 F.2d 735, 739 (10th Cir. 1993).

4. The record submitted by Defendant was the set of documents and data considered by the agency in issuing its agency decision on August 31, 2000. Plaintiffs challenge to the enforceability of his debt was addressed by Diane Spadoni, Regional Director of the Department ofEducation's Regional Service Center, who reviewed the promissory note Plaintiff had signed on June 17, 1985, as well as computer data compiled during the history of Plaintiff's loan. Those documents and data were all that Ms. Spadoni needed to see in order to issue an agency decision regarding the enforceability of Plaintiff's student loan debt. The notion that Ms. Spadoni or anyone else with the Department of Education would have pored over hundreds of pages of documents to determine the enforceability of a $2,500 student loan—when they had in front of them a copy of the promissory note with Mr. Edwards' signature—is absurd.

5. Accordingly, the administrative record which Defendant submitted on May 15, 2002, is the proper record under applicable case law, and Plaintiff should not be permitted to create an entirely new record by supplementing hundreds of pages of documents that were never considered by the agency.

Dated this 21st day of June, 2002.

Respectfully Submitted, JOHN W. SUTHERS
United States Attorney

s/*Peter Krumholz*
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

#108 Opening Brief 7/21/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Filed U.S. District Court District of Colorado BB
2002 JUL 31 PM 4:50 James R. Manspeaker Clerk by [illeg.] Dep. Clk

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff *pro se*
v.
UNITED STATES DEPARTMENT OF EDUCATION
Defendant

Plaintiff's Opening Brief
Oral argument waiver:
Plaintiff *pro se* does not request oral argument

Reasearch and production courtesy of
*Plaintiff's wife *** who is not an attorney.*

Contents

Plaintiff's Opening Brief i
Oral argument waiver i
Table of Contents ii
Tables of
Cases iii
Statement of related cases iv
United States Code & Code of Federal Regulations v
Public Laws vii
Miscellaneous Authorities viii
District court jurisdiction 1
Sovereign immunity 1
Administrative prerequisite immunity 2
Issues Presented for Review 4
Nature, Course and Disposition of Case 4
Facts/Record Relevant to Issues on Review 5
Summary of Argument 6
ARGUMENT
De Novo Review of the EDUC claim "Contract"
Interpretation 7

Consideration-Provisions and Performance 8
Statutes, evidence and facts of record for the EDUC "contract" claim 10
De Novo Review of Agency Adjudicatory Action/Inadequate Factfinding Procedures 11
CSAC's Contact History Report dated 12/31/92 11
De Novo Review of Requests to Correct (and Chances to Disagree on) the Record 13
Correction of EDUC Internal Records 14
A Due Process Anomaly in the Record 15
Record of Privacy Act violation 15
Federal Assistance Program Fraud 16
Conclusion, statement about relief, and signature 16
Footnotes 18
Cases
Aleknagik Natives Ltd. v. Andrus, 648 F.2d 496 (9th Cir. 1981) 3
Allentown Mack Sales & Serv., Inc. v. N.R.L.B., 118 S. Ct. 818 (1998) 10
American Totalisator Co., Inc. v. Fair Grounds Corp., 3 F.3d 810 (5th Cir. 1993) (by footnote) 7
AT&T Technologies, Inc. v. Communications Workers, 475 U.S. 643 (1986) 7
Barry v. Biachi, 443 U.S. 55 (1979) 3
Bell v. Hood, 327 U.S. 678 (1946) 3
Bowen v. Massachusetts, 487 U.S. at 904, quoting Shaughnessy v. Pedreiro, 349 U.S. 48, 51 (1955) 3
Boyer v. Douglas Components Corp., 986 F.2d 999 (6th Cir. 1993) (by footnote) 7
Bureau of Alcohol, Tobacco and Firearms [ATF] v. Federal Labor Relations Authority [FLRA], 464 U.S. 89 (1983) 11
Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971) 11
Cooke v. United States, 91 U.S. 389 (1875) 16
Craft Mach. Works, Inc. v. United States, 926 F.2d 1110 (Fed. Cir. 1991) 8
Darby v. Cisneros, 509 U.S. 137 (1993) 3

Dubois v. United States Dept. of Agriculture[US] Agric., 102 F.3d 1273 (1st Cir. 1996) 11
Finnerty v. Cowen, 508 F.2d 979 (2nd Cir. 1974) 3
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Gete v. Immigration and Naturalization Serv., 121 F.3d 1285 (9th Cir. 1997) 3
Golden v. Kelsey-Hayes Co., 73 F.3d 648 (6th Cir. 1995) (by footnote) 7
Gould, Inc. v. United States, 935 F.2d 1271 (Fed. Cir. 1991) 8
Howard v. F.A.A., 17 F.3d 1213 (9th Cir. 1994) 11
International Union of Operating Eng'rs Local 571 v. Hawkins Constr. Co., 929 F.2d 1346 (8th Cir. 1991) (by footnote) 7
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LTV Educ. Systems, Inc. v. Bell, 862 F.2d 1168 (5th Cir. 1989) (by footnote) 7
McCarthy v. Madigan, 503 U.S. 140 (1992) 2
Mendler v. Winterland Prod. Ltd., 207 F.3d 1119 (9th Cir. 2000) 7
Motor Vehicle Mfrs. Assn. v. State Farm Mut., 463 U.S. 29 (1983 12
New York v. United States, 342 U.S. 882 (by footnote) .. 12
Policy v. Powell Pressed Steel Co., 770 F.2d 609 (6th Cir. 1985) cert. denied, 475 U.S. 1017, 106 S. Ct. 1202 (1986) (by footnote) 7
Securities and Exchange Commission[SEC] v. Chenery Corp., 318 U.S. 80 (1943) 11
Sheet Metal Workers, Local 19 v. 2300 Group, Inc., 949 F.2d 1274 (3rd Cir. 1991) (by footnote) 7
Simeone v. First Bank Nat'l Ass'n, 971 F.2d 103 (8th Cir. 1992) (by footnote) 7
Total Medical Management, Inc. v. United States, 104 F.3d 1314 (Fed. Cir. 1997), cert. denied, 118 S. Ct. 156 (1997) (citing Thermalon Indus., Ltd. v. United States, 34 Fed. Cl. 411, 414 (1995) (citing City of El Centro v. United States, 922 F.2d 816, 8[sic]

United States v. Bostwick, 94 U.S. 53 (1877) 16
United States v. Lara, 181 F.3d 183 (1st Cir. 1993) 10
United States v. Mena, 933 F.2d 19 (1st Cir. 1991) (by footnote) 10
United States v. Sutton, 970 F.2d 1001 (1st Cir. 1992) (by footnote) 10
Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 (1951) 10, 13
Volkman v. United Transp. Union, 73 F.3d 1047 (10th Cir. 1996) (by footnote) 7

Statement of related cases. Except for the unresolved request for review timely filed with EDUC's Hearings Branch on 10/16/97 (upon 9/5/97 initial/sole provision of opportunity to contest the existence/enforceability of debt by objections to Treasury offset), EDUC made no provision for other prior or related formal appeals of this matter.

United States Code & Code of Federal Regulations
Unless otherwise indicated, all citations in this Plaintiff's Opening Brief refer to their source as effective at the time the Complaint in this matter was filed, January 8, 2001.

04 CFR 102 13
04 CFR 105 15
05 USC 552a 1, 2, 6, 13, 15
05 USC 552a 1
05 USC 702 1
05 USC 704 2
05 USC 706 2
05 USC Part 7 1
18 USC 1001 16
18 USC 1341 16
18 USC 241 18
20 USC1082 (by footnote) 9
20 USC 1071-1087-2 9
20 USC 1075 (1982) (by footnote) 12
20 USC 1082 1
20 USC 1083 (1982) (by footnote) 12
20 USC 1091 (by footnote) 12
28 USC 1343 1

28 USC 1346 1
32 CFR 682 15
34 CFR
30.20-30.28 (by footnote) 11
30.24 11
30.33 11
668 (by footnote) 12
682 (by footnote) 12
34 CFR 30 15
34 CFR 33 16
34 CFR 682 ..... 10, 12, 15
34 CFR 682 (1984) 8,9
34 CFR 682 (1984) (by footnote) 12
34 CFR 682 (by footnote) 12
34 CFR 682.208(e) 8
34 CFR 682.208(e) 8
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34 CFR 682.508 8
34 CFR Part 30 11
44 USC 3301 10
44 USC 3309 10
44 USC 3314 10
5 USC 552a 9
FRE106 ..... 10, 14
FRE 801 10
FRE 803 10
FRE 807 14
FRE 901 14
231-2[sic] (by footnote) 13
234[sic] CFR 682 10
242[sic] USC 1981 11
242[sic] USC 1987 18

Public Laws

Pub. L. 102-26 (by footnote) 9
Pub. L. 102-325 (by footnote) 9
Pub. L. 99-272 8
Pub. L. 99-603 12
Pub. L. 99.603 (by footnote) .....
831-431[sic] (by footnote) 13

Miscellaneous Authorities

(Performance and Accountability Series and High Risk Update 2001) Major Management Challenges and Program Risks-Department of Education, GAO-01-245, US GAO (by footnote) 12[sic]
APA 17
Attorney General's Manual on the Administrative Procedure Act 103 (1947) 3
CFR 12
Civil Rights Act 17
Colorado Collection Agency Board 15
Committee on Education and the Workforce, House of Representatives 5
Debt Collection Improvement Act of 1996 13
Education Financial Management—Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 3/28/02, GAO-02-406, US GAO (by footnote) 12
Education Financial Management—Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 4/10/02, GAO-02-513T, US GAO (by footnote) 12
Education Information Security—Improvements Made But Control Weaknesses Remain. 9/12/01, GAO-01-1067, US GAO (by footnote) 12
FCCS 13
Federal Family Education Loan Information System-Weak Computer Controls Increase Risk of Unauthorized Access to Sensitive Data 6/95, AIMD-95-117, US GAO (by footnote) 12
Federal Rules of Evidence rules (FRE) 10
FINANCIAL MANAGEMENT
Financial Management Weaknesses at the Department of Education, 12/6/99, GAO/T-AIMD-00-50 (by footnote) 5
Internal Control Weaknesses Leave Department of Education Vulnerable to Improper Payments, 4/3/01, GAO-01-585T (by footnote) 5

Poor Internal Control Exposes Department of Education to Improper Payments, 7/24/01, GAO-01-997T (by footnote) 5
FINANCIAL MANAGMENT—Education Faces Challenges in Achieving Financial Management Reform. 3/1/00, T-AIMD-00-106, US GAO (by footnote) 12
FINANCIAL MANAGMENT—Educations Financial Management Problems Persist. 5/24/00, T-AIMD-00-180, US GAO (by footnote) 12
FINANCIAL MANAGMENT—Financial Management Challenges Remain at the Department of Education, 9/19/00, T-AIMD-00-323, US GAO (by footnote)..... 12
FINANCIAL MANAGMENT—Financial Management Weaknesses at the Department of Education. 12/6/99, T-AIMD-00-50, US GAO (by footnote)12
FINANCIAL MANAGMENT—Internal Control Weaknesses Leave Department of Education Vulnerable to Improper Payments. 4/3/01, GAO-01-585T, US GAO (by footnote)..... 12
FINANCIAL MANAGMENT—Poor Internal Control Exposes Department of Education to Improper Payments. 7/24/01, GAO-01-997T, US GAO (by footnote) 12
FINANCIAL MANAGEMENT—Poor Internal Controls Expose Department of Eduation to Improper Payments, 9/28/01, GAO-01-1151, US GAO (by footnote)
EDUC ignored
CSAC guaranteed some "loans" from school, not lender, submissions[sic] 12 [sic]
Former Consultant to Orange County School Pleads Guilty to Misappropriating Financial Aid, 11/23/99, U.S. Attorney, Centeral District of California, Relase No. 99-241 (by footnote)..... 6
GAO-01-585T, 4/3/01 (by footnote)..... 12
Green, 2000 WL 33421459, at *3."..... 1
House Task Force on Education 6
Privacy Act 17

Restatement (Second) of Contracts 9
Statement of Lorraine Lewis, Inspector General, U.S. Department of Education, Before the Task Force on Education, Committe on the Budget, U.S. House of Representatives, On Financial Management at the Department of Education, 5/24/00 (by footnote) 6
United States Attorney Central District of California, Public Affairs Office.....6

District court jurisdiction appears under, but may not be limited to, 28 USC 1343(a); 28 USC 1346(a) & (b) and 5 USC 552a(g). My standing here is based on measurable injury in part: a $234.32 tax refund offset (Compl. Ex. A/Supplement to Administrative Record ("SAR") 127), which was a qualified "final" action on the part of the Department of Education ("EDUC") to my understanding of 5 USC Part 7; future confiscation, in an amount intended to grow, that was approximately one-third the total taxable income for my entire immediate family of four at the time of that initial offset; and greater, immeasurable injury, from violations of Constitutional rights (in addition to those against my tax refund property) extending to due process, equality under the law, privacy protections, and the expectation of honesty in government service.

As a citizen and member of the public, I share an interest EDUC's standing, but differ on how that is best served: I have no problem with the mission to vigorously collect loans that are used to pay actual student expenses and guaranteed by the Federal government. However, when a "loan" is fabricated from pre-loan documents (and, apparently, since January of 1986, that may be all it takes) that required more than that for consummation (and conveyed original rights and responsibilities for any "holder" of the pre-loan note), there is no public interest whatsoever in "enforcing collection" from an individual instead of from the entity or entities involved in presenting it in false claim to the government.

Sovereign immunity is waived on more than one level. EDUC "admits jurisdiction only for judicial rev'iew under the Administrative Procedure Act..." [Answer filed 3/19/01, p. 1]. The APA notes removal of the defense of sovereign immunity as a bar to judicial review where it describes that right, at 5 USC 702/Amendments; and provides relief where it identifies jurisdiction, at 5 USC 552a (g). EDUC identified agency waiver of sovereign immunity, under 20 USC 1082(a)(2), while acknowledging the limit to its prohibitions in the cryptic qualification, "except when the Secretary exercises powers that are clearly outside his statutory authority. See, e.g., Green, 2000 WL 33421459, at #3." [Mem. Brief in Support of Mot. for Sum. Jdgmt. or, in the Alt., Mot. to Dismiss Purs. to

Fed.R.Civ.P. 12(b)(1) dated/filed 10/1/01, p. 18] The foregoing seems to expressly address (and resolve) EDUC's first three affirmative defenses, as to access to relief, waiver of sovereign immunity, and authority of this court [Ans., p. 9].

Administrative prerequisite immunity, the fourth affirmative defense [Ans., p. 9], was impliedly waived on numerous occasions by the agency's refusal to engage in the most fundamental step of our dispute: review of the falsity of the EDUC claim, upon which liability for damages from related agency action logically arise. I sought verification of debt for years, and did not cease objecting after I timely filed the first and only time administrative review was offered in 1997—but I was *required* to "make a federal case" out of defending myself before receiving this adjudicatory look at the existence of alleged obligation on my part in light of the lack of lender performance under the terms of the written contract. Irrespective of application for declaratory order, any form of reconsideration, or appeal to superior agency authority, 5 USC 704 provides all actions raised in my Complaint-within 2 years from the date of the cause of action, or (according to 5 USC 552a(g)(5)) *from my discovery* of misrepresentation of APA required disclosures of informa-

tion material to the establishment of EDUC liability—arising from final agency action are reviewable within the scope of 5 USC 706.

> [U.S. Supreme]Court's precedents have recognized at least three broad sets of circumstances in which the interest of the individual weigh heavily against requiring administrative exhaustion. McCarthy v. Madigan, 503 u.S. 140, 146 (1992).

They appear to be (and to apply here): 1) undue prejudice from, e.g., unreasonable or indefinite timeframe for administrative action, 2) inadequacy of administrative remedy where, e.g., challenge is to the adequacy of agency procedure itself, and 3) if the agency is shown to be biased or has otherwise predetermined the issue before it. *Id., in general*

> While federal courts may be free to apply, where appropriate, other prudential doctrines of judicial administration to limit the scope and timing of judicial review, [the APA] 10(c), by its very terms, has limited the availability of the doctrine of exhaustion of administrative remedies to that which the [prescribed] statute or [agency] rule clearly mandates.
>
> The last sentence of 10(c) refers explicitly to "any form of reconsideration" and "an appeal to superior agency authority." Congress clearly was concerned with making the exhaustion requirement unambiguous, so that aggrieved parties would

> know precisely what administrative steps were required before judicial review would

> be available. If courts were able to impose additional exhaustion requirements beyond those provided by Congress or the agency, the last sentence of 10(c) would make no sense...would transform 10(c) from a provision designed to " 'remove obstacles to judicial review of agency action,' " Bowen v. Massachusetts, 487 U.S. at 904, quoting Shaughnessy v. Pedreiro, 349 U.S. 48, 51 (1955), into a trap for the unwary .
>
> ...Attorney General Clark reiterated the Department of Justice's view that 10(c) "embodies the doctrine of exhaustion of administrative remedies... .Agency action which is finally operative and decisive is reviewable." Attorney General's Manual on the [APA] 103 (1947). *Darby v. Cisneros,* 509 U.S. 137, 146-47, 149 n. 10 (1993).

One could not guess from EDUC's 8/31/00 letter [AR 1-2] that *further administrative approach* might be more effective than the *required request for review* filed 10/16/97 to establish that the EDUC claim *was not a debt / legally enforceable against me, and that certification for offset would be false:* requiring such now would seem to be hairsplitting:

> Federal courts have held the "exhaustion of administrative remedies is not required when 'the question of the adequacy of the administrative remedy...[is] for all practical purposes identical with the merits of [the plaintiff's] lawsuit.' " Barry v. Biachi, 443 U.S. 55, 65 n. 10 (1979); Gete v. Immigration and Naturalization Serv., 121 F.3d 1285, 1291 (9th Cir. 1997); accord, *Finnerty v. Cowen,* 508 F.2d 979,983 (2nd Cir. 1974) (collecting cases).

The lack of independent agency review of the EDUC claim details made it obvious that claims to EDUC based on its falsity would have been futile, see Aleknagik Natives Ltd. v. Andrus, 648 F.2d 496,500 (9th Cir. 1981) (no administrative exhaustion required where it would be "meaningless as a practical matter.").

Whereas EDUC's final action followed one, incomplete, administrative "opportunity" made available in 7 years, violation of my rights inherent in that offset was deliberate.

> Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. Bell v. Hood, 327 U.S. 678, 684 (1946).

EDUC acted and acts for the United States; if EDUC waived tort prerequisites before this suit (or did not identify/shielded from liability an indispensable co-defendant), where the United States' liability equates to a private individual's (i.e., for contract- or statutory-rights-violations), it seems clear this court may grant all forms of relief-including, if necessary, removal of only the appropriate claims from my Complaint to their proper venue without prejudice within the six-year limitation for suits against the government.

-4-

Issues Presented for Review *only appear to be resolved* by EDUC's fifth affirmative defense, that attempts to dispose of the burden of proving a viable contract, "Plaintiff's signature of the promissory note ["Note" herein] for the loan at issue is cause for estoppel to deny liability thereunder for the loan amount and accrued interest, fees and charges." Ans. p. 9 [emphases added]. This *sleight-of-hand* (in writing), diverts attention from the contested *lender action required in the Note,* to the self-serving *illusion/conclusion* that loan was made—by a

different lender, without a single lender-generated document. This seed of our respective claims [EDUC's self-generated on 5/25/93, mine involuntarily arising on 9/22/00] is not the only issue: the Complaint and Argument below present for review the alleged loan *transaction/contract;* and, independently, EDUC exchanges, decisions and actions directed at me, based solely on *possession* (as "Holder," not in due course), of a Note subject to my unanswered, valid defense of the obligation through numerous requests for verification and objections to existence/enforceability of debt.

Nature, Course and Disposition of Case cover EDUC failure to meet the burden of proof in alleging a *contract* with me; on a tiny scale, it shows accounting, auditing, and records-destruction practices that turn *corporate* reputations (i.e., Arthur Andersen's) into euphemisms for fraud: the EDUC claim is not "close enough for government work."

The pre-suit course of the EDUC claim was conducted according to every opportunity, received over a course of years, to *challenge the existence oj the alleged 1985 debt.* I asked for verification whenever offered, and timely filed for agency review in 1997, by sworn request/selection of choices *EDUC presented as valid objections to offset to secure review.* EDUC's Hearings Branch terminated review without notice when I declined to convert my request to sworn *acknowledgment of debt* by submitting post-1/86 "loan discharge" applications from a follow-up letter seeking further "applicant" information.

Occasionally volunteering more detailed objections in response to collection contractor demands (to supplement requests for each "verification of debt" offered), I declined to treat the "loan" as a *fait-accompli*—i.e., alleging the school owed a <u>refund</u> ifit "received"

the check, as suggested in a 11/12/98 reply (full of generalities and misinterpretations) to a letter of mine from a <u>*Debt Collection* Service</u> employee [Compl. Ex. J, aka SAR 80-1]. Without the <u>Hearings Branch</u> completing

the 1997-requested review—even though I raised it in later letters—offset was effected 9/22/00, shortly after another, dismissive *Debt Collection Service* reply to another voluntary objection letter I sent: the prerequisite certification for offset (still not disclosed by EDUC) *could* not be valid. I filed this suit.

Facts/Record Relevant to Issues on Review, despite EDUC's myopic focus on a limited portion of its own in-house materials plus the *Note* at issue (there is no "loan at issue," but a claim of Federal guarantee that is a peripheral matter here); the *whole* agency record (not timely filed when EDUC recognized APA review jurisdiction [Ans., p. 1]) and relevant facts and evidence include EDUC statements by certification or waiver in prior processes (i.e., disclosure, discovery and exhibit exchanges in this suit—ostensibly valid/unobjectionable for trial de novo) and public records/knowledge of issues related to my Complaint, not limited, as EDUC would have, to issues it might choose for suit.

Committee on Education and the Workforce, House of Representatives GAO testimony before Subcommittees includes (Oversight and Investigations) "vulnerabilities in [EDUC] student financial assistance programs have led [GAO] since 1990 to designate this a highrisk area for waste, fraud, abuse, and mismanagement;"[1] and, (Select Ed.), on Internal Control Weaknesses Leave Department of Education Vulnerable to Improper Payments[2]:

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[1] FINANCIAL MANAGEMENT: Financial Management Weaknesses at the Department of Education, Statement of Gloria Jarmon, Director, Health, Education & Human Services, Accounting and Financial Management Issues, Accounting and Information Management Division, GAO/T-AIMD-00-50, p. 2, 12/6/99 (footnote omitted)

[2] "Improper payments include errors, such as duplicate payments and calculation errors; payments for *unsupported or inadequately supported claims;* payments for *services not rendered or to ineligible beneficiaries;* and payments resulting from fraud and abuse." (*emphasis added*) FINANCIAL MANAGEMENT: Internal Control Weaknesses Leave Department of Education Vulnerable to Improper Payments, Statement of Jeffrey C. Steinhoff, Managing Director, Financial Management and Assurance, GAO-01-585T, p. 2, 4/3/01

> Consequently, continued weaknesses in information systems controls increases the risk of unauthorized access or disruption in services and make Education's sensitive grant and loan data vulnerable to inadvertent or deliberate misuse, fraudulent use, improper disclosure, or destruction, which could occur without being detected.[3]

As revealed in Argument/evidence below, *EDUC* made pertinent findings, proximate to honoring the federal guarantee for the EDUC claim, about claimants Bank of America (BoA) and California Student Aid Commission (CSAC), but had failed to obtain the only other complete CSAC record extant besides the "endorsed" Note [produced/signed for First Independent Trust *at the school* #7926, Travel and Trade Career Institute (TTCI)].

-6-

A *relevant* fact about TTCI, known *before* offset action against me, which EDUC did not deem suitable for inclusion in 4/26/01 initial disclosure, subsequent responses to discovery requests, or (improper) 10/1/01 motion for summary judgment/dismissal, *but considered reportable* on 5/24/00, to the House Task Force on Education was that:

> On February 28, 2000, the Director of the Orange, California, branch campus of Travel and Trade Career Institute was sentenced to five months in jail, five months confinement in a community halfway house, $83,000 restitution, $50 special assessment, and three years supervised release...[4]

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[3] *Ibid.*, pp. 10-11. See also, in general, FINANCIAL MANAGEMENT: Poor Internal Control Exposes Department of Education to Improper Pavments, Statement of Linda Calbom, Director, Financial Management and Assurance, GAO-01-997T,7/24/01.

[4] Statement of Lorraine Lewis, Inspector General, U.S. Department of Education, Before the Task Force on Education, Committee on the

...which statement followed (but attributed the use made of said misappropriations in the reverse of) information disseminated in the November 23, 1999, United States Attorney Central District of California, Public Affairs Officer's press release:

> Appearing before United States District Judge David O. Carter, Braxton admitted that he was under contract to manage the financially troubled Travel and Trade Career Institute in Garden Grove when he applied for and received approximately $100,000 in Pell Grant funds. ...Braxton used the majority of the funds for the school's operational expenses and a small amount for his personal use. The United States Department of Education's Inspector General later learned that the trade school enrolled few students, and that Braxton had falsified reports concerning the use of the money. [¶] Braxton is scheduled to be sentenced by Judge Carter on February 28.[5]

Argument below includes other facts, and account information EDUC withheld until *after* I filed suit, so not excluded, if material to establishing liability (5 USC 552a (g)(5)).

Summary of Argument must include that the EDUC claim is for a "contract" for which my obligation ended when First Independent Trust did not advance me a loan check that I no longer needed to pursue; EDUC's status ("Holder") cannot be traced to an advance to me by that lender, nor withstand assertion of the rights (*i.e.,* burden

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Budget, U.S. House of Representatives, *On Financial Management at the Department of Education,* May 24, 2000, p. 4.

[5] United States Attorney, Central District of California, Thom Mrozek, Public Affairs Officer (213) 894-6947, *thom.mrozek@usdoj.gov,* Release No. 99-241, Former Consultant to Orange County School Pleads Guilty to Misappropriating Financial Aid, November 23, 1999.

of proof) under which any transfer of the Note expressly remains. EDUC had no reason not to know the CSAC 10/30/92 "endorsement" on the Note was unsupported by the alleged originating lender (#801178, "BoA") claim of Bank of America, and was disqualified by CSAC-recorded non-compliance with due diligence prerequisites—*before* EDUC stole our tax refund.

To cover payment of CSAC's "guarantee," EDUC participated in presenting numerous false claims related to a federal financial aid program; employed the United States Postal Service in a pattern involving a succession of collection contractors and demands, while ignoring the lack of loan records, to defraud an individual of money; and made a false

certification for "involuntary payment" when submitting the account to an Agency of the Government (US Treasury-FMS) for "collection;" having thus violated my Constitutional and civil rights to equal application of law to contracts, privacy/security in property, liberty from threats to earnings/reputation tied to employment/credit opportunities, and expectation of honesty in government service.

Why did EDUC ignore: statutes regulating collections *be for valid debts;* that program participants qualify for payment under *all* applicable regulations; standards of thorough, accurate documentation/records maintenance until claim resolution; dictum to provide opportunities for contesting allegations and evidence, and to record adjudicatory matters *for* appeal/review; limits on authority to hire contractors, including retention of dispute resolution; and requirement of due process, to suffocate a valid defense and dominate under color of authority? More *sleight-of-hand* (please see footnoted notations):

> Those documents and data[6] were all that Ms. Spadoni needed to see in order to issue an agency decision[7] regarding the enforceability of Plaintiff's student loan debt.[8] The notion[9] that Ms. Spadoni or anyone else with the Department of Education would have pored over hundreds of pages of documents[10] to determine the enforceability[11] of a $2,500 student loan[12] –when they had in front of them a copy of the promissory note with Mr. Edwards' signature[13] –is absurd.[14] *Defendant's Objection to Plaintiff's Supplementation of [Admin. Record]* filed 6/21/02, pp. 2-3.

...versus a balance *"as of August 29, 2000"* [AR 22]: **$6,646.03** that includes 25% "Projected/Actual CoII. Agency Fees," *when the account was not in referral.*[15]

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[6] *Internal agency "records"* & Note only filed 5/15/02, a capricious 22-page designation as "Administrative Record"

[7] *Dated* 8/31/00; *Cf.* review request *filed* 10/16/97 (see AR 14).

[8] Failing to determine the also-challenged existence of the alleged debt, for which no loan/lender records exist.

[9] A word calculated to imply no reasonable expectation of thorough, independent ,statutory agency investigation.

[10] That were submitted as the "whole" record/facts about *years'* of agency mis-, mal-, non-feasance—*"poring" over the dearth of lender/loan evidence for the EDUC claim would not discommode the least-motivated employee!*

[11] Only to be found after an adjudicatory-type conclusion, without foundation, against challenge to *existence...*

[12] The EDUC claim is *not* based on a *student loan* , but on a CSAC alleged loan/default claim of Bank of America.

[13] The Note, by its Estimated Date of Disbursement [see, e.g., SAR 469], proves itself not to qualify as evidence of its proposed loan transaction when the producing/loan originating school, TTCI, required the signature thereon.

[14] No less so than EDUC spending 9 years' collection, with 1.5 years' litigation, on a claim without any loan papers.

[15] According to SAR 182, "R111 Referral History Screen" (Collection Agency History); *cf* AR 22

Thus, all program regulars profit, and EDUC's "return" *exceeds the "loan"* at least $4,146.03.

ARGUMENT: De Novo Review of the EDUC claim "Contract" Interpretation

> Contract interpretation is "undeniably an issue for judicial determination." *AT&T Technologies, Inc. v. Communications Workers,* 475 U.S. 643,648-49 (1986); (The interpretation and meaning of contract provisions is a question of law that we review de novo.) *Mendler v. Winterland Prod. Ltd.,* 207 F.3d 1119, 1121 (9th Cir. 2000).[16]

Conflict as to exchanges aside (Records Maintenance is argued below), EDUC recorded disputes of "debt" *based on my not receiving a loan in 1985,* before and after copying me the Note, *e.g.,* AR 13-19. However, EDUC's *sole pre-suit retort* [AR 16; *but see* Compl. Ex. J/SAR 80-81] *implied, but did not show,* TTCI received the loan, on the basis that *funds borrowed by a student are disbursed to the institution by check or other means.*

That basis reflects changes in code by Pub. L. 99-272 , 4/7/86 100 Stat 340 § 16012, retroactive to 1/1/86 §16041(b), that were not in effect if TTCI "received" the

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[16] *See also Volkman v. United Transp. Union,* 73 F.3d 1047, 1050 (10th Cir. 1996); *Golden v. Kelsey-Hayes Co.,* 73 F.3d 648, 653 (6th Cir. 1995); *Linton v. United Parcel Serv.,* 15 F.3d 1365, 1370 (6th Cir. 1994); *American Totalisator Co., Inc. v. Fair Grounds Corp.,* 3 F.3d 810, 813 (5th Cir. 1993); *Boyer v. Douglas Components Corp.,* 986 F.2d 999, 1003 (6th Cir. 1993); *First American Nat'l Bank v. Fidelity & Deposit Co.,* 5 F.3d 928, 984 (6th Cir. 1993) (citing *Policy v. Powell Pressed Steel Co.,* 770 F.2d 609,612 (6th Cir. 1985), cert. denied, 475 U.S. 1017, 106 S. Ct. 1202 (1986)); *Simeone v. First Bank Nat'l Ass'n,* 971 F.2d 103, 106 (8th Cir. 1992); *International Union of Operating Eng'rs Local 571 v. Hawkins Constr. Co.,* 929 F.2d 1346,1348 (8th Cir. 1991); *Sheet Metal Workers, Local 19 v. 2300 Group, Inc.,* 949 F.2d 1274, 1278-79 (3rd Cir. 1991); *LTV Educ. Systems, Inc. v. Belt,* 862 F.2d 1168, 1772 (5th Cir. 1989).

disbursal described in the Note. *Disbursement requirements* "requir[ed] the personal endorsement of the borrower. ..[n]either a lender nor a school [could] obtain a borrowers' power of attorney or other authorization to endorse a check. .." [(1984) 34 CFR 682.401 (b)(6)]. The Note[17] [e.g., SAR 469-72] does not chose the school notification <u>*alternate*</u> (to lender *or* guarantor *informing* TTCI of *insurance* in 30 days) "by the lender sending allloan checks to the school for delivery to the borrower," [(1984) 34 CFR 682.401(b)(7)(ii)]; it is not implied because TTCI's address does not appear.

EDUC has ignored the terms of the Note and criteria for a valid express contract:

> "a mutual intent to contract, including offer, acceptance, and consideration; and authority on the part of the government representative who entered or ratified the agreement to bind the United States in contract." Total Medical Management, Inc. v. United States, 104 F.3d 1314, 1319 (Fed. Cir. 1997).[18]

In reference to the Note X [see AR 5: /SAR 472], as a new "Holder" *not in due course* in 1993, EDUC was not empowered to "ratif[y] the agreement to bind the United States [and me] in contract" without being able to show; as the lender would have to, that the precedent disbursement *described* had incurred my contingent obligation. Instead, there is no lender document/record of disbursal

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[17] Legib1y disclosed to this Court by EDUC as AR 3-4; first disclosed to me with a legible second page on 6/6/01 [see SAR 197-98]; produced in 2nd-page-illegible form *prior to this suit* [see Compl. Ex. D referenced in SAR 32-33; *see also* (pre-suit) SAR 42-43 & 72-73 *and* (post-suit) SAR 433-34]; <u>enlarged for readability</u> @ SAR 469- 72.

[18] *Cert. denied,* 118 S. Ct. 156 (1997) (citing *Thermalon Indus., Ltd. v. United States,* 34 Fed. Cl. 411, 414 (1995) (citing *City of El Centro v. United States,* 922 F.2d 816, 820 (Fed. Cir. 1990), cert. denied, 501 U.S. 1230 (1991); *Fincke v. United States,* 230 Ct. Cl. 233, 244, 675 F.2d 289, 295 (1982).

(or *any* contact with me), and no evidence of transfer, under Guaranteed Student Loan Program conditions (34 CFR 682.401(b)(17), 34 CFR 682.208(e) [*see* Compl. p. 5], *or* 34 CFR 682.508, whichever applies) of the one or more transactions (ostensibly including Bank of America c/o CMSC #801178 [AR 5]) required to sustain CSAC's 10/30/92 "endorsement" to EDUC [*i.e.*, AR 4].

Consideration—Provisions and Performance

> "In contract interpretation, the plain and unambiguous meaning of a written agreement controls." *Craft Mach. Works, Inc. v. United States,* 926 F.2d 1110, 1113 (Fed. Cir. 1991); *see also Gould, Inc. v. United States,* 935 F.2d 1271, 1274 (Fed. Cir. 1991) (The contract must be considered as a whole and interpreted to effectuate its spirit and purpose, giving reasonable meaning to all parts.)

Specific language in the subject Promissory Note and Disclosure Statement indicating the consideration included my personal receipt of the advance is found in provisions:

> **I** "I promise to pay... the 'Loan Amount'... to the extent it is advanced to me. .." **II-2)** "If I have not already enrolled..." **VII-8)** "In this Note the words I, me and my, mean each and all of those who signed it. .." and **XII** "I will use all of the proceeds that I receive from this loan.. .including room and board.. .and transportation and commuting costs." [Note, *e.g.,* AR3-4 *or* SAR 469-72]

That last provision (XII) also set the "terms of this Promissory Note will be interpreted according to the law (20 U.S.C. 1071 to 1087-2) and Federal Regulations (2:[sic] Part 682) that govern the GSLP." *Id* No provision

[of the Note could be changed or? *(hard to read)*] modified except in writing. *Id.*, VII-4. Effective code, partially quoted and cited on page 8 above, required student loan disbursements be by check, payable to and requiring the endorsement of the borrower [(1984) 34 CFR 682.401 (b)(6)[19]].

> To constitute consideration, a performance or a return promise must be bargained for ...promise or apparent promise is not consideration if by its terms the promisor or purported promisor reserves a choice of alternative performances...
> Restatement (Second) of Contracts § 71(1) & 77, respectively (1979).

There is no indication I understood or agreed my signature on that Note would obligate me if I did not receive a loan check or if "disbursal" was received by TTCI instead of me.

There is nothing in EDUC's "Administrative Record" to indicate resolution of contract interpretation dispute, or to substantiate reliance on the 20 pages of in-house computer printouts, submitted for judicial review, for the "final decision." *Cf.*, "...true copies of the Department's Administrative Record compiled for use..." (5/9/02 Cert. of Admin. R., filed 5/15/02), *and* "...the set of documents and data considered by the agency in issuing its agency decision on August 31, 2000" (Def.'s Obj. to Pl. Supp. of the Admin. R. filed 6/21/02), with EDUC's own record entry regarding that 8/31/00 letter,[20] in AR 20-21:

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[19] Interpretive law [*see* XII of the Note, *e.g.*, AR 4 or SAR 472], restricts audits of financial transactions: "...in no case shall the Comptroller General or the Inspector General apply subsequently determined standards, procedures or regulations to the records of such [EDUC program participant] agency, lender..." [20 USC 1082(f)(4)]

[20] Although that letter indicated by **1992**, P.L.'s 102-26 and 102-325 "eliminated the statute of limitations for student loan collections," EDUC's regulations contradicted this [34 CPR 30.20(b)(4)] as of July 1, **2000**

Date 08/29/00 Source Code PIC596
Narrative MI-BORR STATES IN RATHER UNCLEAR TERMS THAT THE DEBT IS TOO OLD TO BE ENFORCED AND THAT HE IS DISPUTING CERTIF. FOR TOP; RESP: GV AUTHORITY FOR ELIMINATION OF STATUTE OF LIMITATIONS, GV AUTHORITY FOR TOP AND ADV BORR RECV'D N18 (BORR HAD INCLUD A COPY OF THE N18 WITH HIS LTR), REFER TO PIC PHONES. LBROOKS

Nothing outside my own letter was produced; there was no *investigation* or *adjudication*:

> In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may...take...adverse action against such individual, as a result of information produced by such matching programs, until--(A)(i) the agency has independently verified the information... [which] requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action... [5 USC 552a(p)(1) & (2)]

> The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competentjurisdiction with respect to that loan...34 CFR 682.402 [emphases added]

Unresolved contract interpretation *prohibited* offset, so evidence should not be excluded by the miscreant agency (especially admissions or withheld information).

Evidence of subsequent events frequently sheds light upon, and thus assumes relevance in relation to, antecedent acts. *See United States v. Lara,* 181 F.3d 183, 204 (1st Cir. 1993).[21]

Statutes, evidence and facts of record for the EDUC "contract" claim.

"Records" include all papers/documentary materials made/received by a federal agency under federal law or in connection with the transaction of public business, preserved *or appropriate for preservation* by that agency as evidence of decisions, operations or other activities... [*see* 44 USC 3301]. Absent US Comptroller General written approval, there is a binding [44 USC 3314] prohibition on disposal of [per 44 USC 3309]:

> [r]ecords pertaining to claims and demands by...the Government of the United States or to accounts in which the [US Gov't] is concerned, either as debtor or creditor... until the claims, demands and accounts have been settled and adjusted in the [GAO].

Federal Rules of Evidence rules (FRE) provide for consideration of: the remainder of or related writings/recorded statements in fairness to be considered contemporaneously with EDUC's choice of in-house records to imply a legitimate "loan history" [FRE 106]; hearsay exceptions on absences in records of regularly conducted business, and public records/reports, to prove a matter's nonoccurrence or nonexistence, [FRE 803(7) & (10), respectively], and party-opponent admissions, [FRE 801(d)(2)]. Despite EDUC's pre-suit withholding and/or ignoring such information/factors: The reviewing court must consider

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[21] *See also, U.S. v. Sutton,* 970 F.2d 1001, 1007 (1st Cir. 1992); *U.S. v. Mena,* 933 F.2d 19,25 n. 5 (1st Cir. 1991)

> "the record in its entirety..., including the body of evidence opposed to the [agency's] view." *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 487-88 (1951); *and see, AllentownMack Sales & Serv., Inc. v. N.R.L.B.*, 118 S. Ct. 818,829 (1998)[22]

Interpretive code in Note ¶XII [AR 4/SAR 472] requires a guaranty agency to retain complete and accurate records [34 CFR 682.414(a)(1)(ii)] including (but not limited to) those that document the right to EDUC payments, and *all* documents filed to support a claim by a lender (also retains records, id. § 682.414(a)(4)(ii)). Guarantor reten-tion is minimum 5 years *after a loan is paid in full,* and may be longer [34 CPR 682 .414(a)(2)].

-11-

However, the Note is certifiably[23] the *sole* item obtained by EDUC prior to this suit, despite receipt of numerous requests for verification of debt and protests of the claim (but see records maintenance section/issues infra), and of my 10/16/97 filing for review (within 5 years of EDUC's 5/25/93 acceptance); but it does not demonstrate lender performance. My rights under 42 USC 1981 (a)-(b) were trespassed by EDUC's offset of my 1999 tax refund against a 1985 Note (for which my obligation was never engaged) that ignored its provisions, statutory context, and related records.

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[22] "...purports to be engaged in simple factfinding,...[the agency] is not free to prescribe what inferences from the evidence it will accept and reject, but must draw all those inferences that the evidence fairly demands."

[23] In reference to: a) Defendant's Responses to Plaintiff's Interrogatories * * *; b) * * * Defendant's Answer to Plaintiff's Requests for Admissions * * *; and c) Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents * * * *See*, at request /response topic # shown: #8 at SAR 203-4 & 220, #1 at SAR 247 & 338, #2 at SAR 247, #3 at SAR 234, 247-48 & 339, #6 at SAR 248, ***and most particularly on-point:*** #7 & 8 at SAR 248 & 340-41, *also* #47 at SAR 264, #50 at SAR 265, #1, 3 & 4, at SAR 267, #12 at SAR 269-70.

De Novo Review of Agency Adjudicatory Action/Inadequate Factfinding Procedures

> De novo review of whether the [agency's] decision was "unwarranted by the facts" is authorized by 706 (2) (F)...when the action is adjudicatory in nature and...agency factfinding procedures are inadequate. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971). *Also, [SEC] v. Chenery Corp.*, 318 U.S. 80,94 (1943);[24] *[ATF]* v. *[FLRA]*, 464 U.S. 89, 97 n. 7 (1983); *Dubois v. [US]Agric.*, 102 F.3d 1273, 1284 (1st Cir. 1996); *Howard v. F.A.A.*, 17 F.3d 1213, 1215 (9th Cir. 1994)

EDUC's revised[25] "(LI02) Collector Note Pad" shows its Hearings Branch received my filing on 10/16/97 for "TOP HEARING/REVIEW;" requested only "COPY OF PN [Note];" in reply to challenges on enforceability and existence of debt, sent only "ATB [ability to benefit] & UNAUTHOIZED[sic] SIGNATURE APPL AND COPY OF PN;" eventually recorded a letter from me formally declining to become/qualifying as an "applicant" for "loan discharge," but" STILL STATES HE DOES NOT OWE THE DEBT;" **and never contacted me again**. [AR 14].

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[24] "But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law."

[25] *Cf* 6-page productions as *trial exhibits (SAR 432-52)* at SAR 444-49 "(L102) Collector Note Pad" and as Mem Br. in Support of Mot. for Summ. Judgment or, in the Alt., Motion to Dismiss Purs. to Fed. R. Civ. P. 12(b)(1) Ex. E filed 10/1/01*** *and* garbled 11-page *initial disclosures (SAR 147-88)* at SAR 154-64 "(L102) Collector Note Pad" ***

EDUC's record shows the Hearings Branch did not comply with 34 CPR Part 30 in general [i.e., 34 CPR 30.33(a)][26] or with §34 CPR 30.24(e)[27] in particular. Due process was violated not only by lack of any investigation (admitted by EDUC during these proceedings[28]), but also by *subjugation* of statutory opportunity for review *to agency contingency of prior sworn acknowledgment of debt:* that CSAC could produce only one "record" to support the Note for the EDUC claim was not reviewed *because* I declined to apply for post-1/86-loan "discharge" consideration[29] to moot review of existence.

EDUC did not obtain that record, a "Contact History Report dated 12/31/92,"[30] before suit was filed, albeit objection to lack of prior contact had been noted [AR 15]; then it was deemed citable (Ans., p. 3 #14-b), but unreadable (*see* SAR 209-10, Int/Resp #23-24).

CSAC's "Contact History Report dated 12/31/92" [SAR 153] is self-explanatory to this extent: A) the "loan history" for the EDUC claim consists of one *CSAC-generated* sheet that does not record a single reply (actual

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[26] Referral for offset hinged on "if a named person owes a debt under a program...of [EDUC]" and "complying with...Secs. 30.20-30.28" as modified therein: The former was not established by, or reasonably concluded from, the actual "loan history." The latter did not provide for *not* notifying me of "a decision regarding the issues identified in the notice under.. .Sec. 30.33 (b)(3)(ii) [existence. amount. enforceability or past due status)" [34 CPR 30.24(e)(2)] for 9/5/97 N18 [offset notice, AR 8] for 10/16/97 filing [AR 14] before 9/22/00 offset [SAR 127].

[27] See Compl. Ex. G, p. 1 [SAR 62], on EDUC Request for Review form [SAR 60-61 (blank)] at Part II 10 & 12

[28] "...because there was no investigation" * * * Admission 20 [SAR 251] * * * this is confirmed by lack of pre-suit possession of school, lender or CSAC records, Answer to Admission 7 at SAR 248 * * *

[29] *See* 10/16/97-4/3/98 at AR 14; 10/30/97 sole written reply from Hearings Branch (Compl. Ex. G) at SAR 62-74; & Answer to Admission 20, AR 251 * * *

[30] *See Defendant U.S. Department of Education's Initial Disclosures* listing (SAR 147-51) at SAR 148, item B; and production of said item B, CSAC's Contact History Report dated 12/31/92, at SAR 153

contact), for listings *no earlier than* ***2/26/87***; B) lender #828374 of Note [AR 3] does not appear; C) the claim was disqualified [*see* 34 CRR 682.406(a)(5)] when no lender claim was filed by 9/86 (on "default" consistent with Note ¶II, V-I & V -2 [AR 3-4; *cf* DEEFTDTE in AR 5[31]]); D) the main heading apartment address matches a *relisting*, of a 9/28/87 entry, on 9/17/90—followed by 3 descriptions of "BAD ADDRESS" (12/27/90, 10/07/91 and 11/20/91); E) interest is missing [Note ¶III/AR3] (6/21/85-12/31/98: $2,500 @ 8% ≈ $1,595); and, F) CSAC failed due diligence [34 CPR 682.406(a)(11)] required 180 days from 4/16/87 [34 CPR 682.410(b)(6)(ii)].

Having had two community college classes in 1984 without one, I did not know a diploma[32] was required for the program until I received EDUC's 9/5/97 review notice. False certification[33] was not the sole area of TTCI's[34] program violations[35] if it took the "loan;"[36] nor its only

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[31] (R107) GSL Program Specific Screen *explanatory sheet* SAR 179 * * *. *Note:* AR 5 "ORGCLMPAYDTE" shows an *incredible* one-day turnaround between *default* and default *claim payment.*

[32] The lack was reported, in my Request for Review [see 10/30/97, AR 14], and corrected in 1999 [see SAR 454].

[33] 34 CFR 682.200(a)(1) defines "eligible student" by Part 668, as does § 682.201 for "eligible borrowers," where 668.32(e)(1) *requires* a high school diploma or its recognized equivalent for program eligibility, it did not appear an avoidable prerequisite by otherwise administering a testfor *eligibility determinations before* 1986—when subsec. (d) was added to 20 USC 1091 (not listed as interpretive law in Note's XII) by Pub. L. 99-603. * * *

[34] *See* "007926" at top of Note [AR3] & at "SID" of AR 5 school i.d. # (per "RI07" explanatory sheet), described as "originating school: 007926 Travel and Trade Career Institute" [TTCI] at SAR 170.

[35] As the sole "loan" EDUC recorded under my identifiers [AR 185-88], the alleged 6/21/85 disbursement [AR 5] violated first-time student/borrower disbursal limits of $1,500 * * * quarterly) [(1984) 34CFR 682.401(b)(3)(ii)] and the $1,500 *maximum loan amount* for single installment disbursals [(1982) 20 USC 1075(a)(1)(B)]; nor is there any hint that TTCI was able to originate this first "loan" based on prerequisite prior-lender-denial [*id.* 1083(a)(1)(B)].

[36] According to the inference in EDUC's 11/12/98 letter (Compl. Ex. J) [see SAR 80-1], *I have never seen the alleged 6/21/85 disbursement, nor any lender source, document or record that shows it.*

financial assistance fraud EDUC knew before offset against me (see quotes, p. 6 supra). From its own financial/information-management dilemma,[37] EDUC ignored: CSAC guaranteed some "loans" from school, not lender, submissions;[38] allowed unsupervised lender overrides of loan status;[39] and third-parties could transfer loans between two banks.[40] In 1992,[41] EDUC rejected $800,000 of fraudulent claims (i.e., improperly serviced, no records)

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[37] *E.g.*, US General Accounting Office Reports:
Federal Family Education Loan Information System: Week Computer controls Increase Risk of Unauthorized Access to Sensitive Data 6/95, AIMD-95-117 • Education Financial Management: Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 3/28/02, GAO-02-406 • Education Financial Management: Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 4/10/02, GAO-02-513T • Education Information Security: Improvements Made But Control Weaknesses Remain. 9/12/01, GAO-O 1-1 067
• (Performance and Accountability Series and High Risk Update 2001) Major Management Challenges and Program Risks: Department of Education, GAO-01-245
Also, under main title of FINANCIAL MANAGMENT: • Financial Management Weaknesses at the Department of Education. 12/6/99, T-AIMD-00-50. • Education Faces Challenges in Achieving Financial Management Reform. 3/1/00, T-AIMD-00-I06. • Educations Financial Management Problems Persist. 5/24/00, T-AIMD-00-180. • Financial Management Challenges Remain at the Department of Education. 9/19/00, T-AIMD-00-323. • Internal Control Weaknesses Leave Department of Education Vulnerable to Imoroper Payments. 4/3/01, GAO-01-585T. • Poor Internal Control Exposes Department of Education to Improper Pavments. 7/24/01, GAO-01-997T • Poor Internal Controls Expose Department of Education to Improper Pavments. 9/28/01, GAO-01-1151

[38] See Finding 1 at SAR 284 (of 7/10/92 report on CSAC [SAR 283-302], disclosed by EDUC 9/10/01 [SAR 281])

[39] See Finding 19 at SAR 317 (of 6/10/94 report on CSAC [SAR 303-325], disclosed by EDUC 9/10/01 [SAR 281])

[40] See Finding 27 at SAR 296 (of 7/10/92 report on CSAC [SAR 283-302], disclosed by EDUC 9/10/01 [SAR 281])

[41] This is the same year as the "endorsement" of the subject Note; no explanation is given for its different treatment.

from CSAC/Bank of America[42] (the EDUC43[43] claim "originating" lender).[44] The CPR provides remedial action for each entity.[45]

> ...what we said in Burlington Truck Lines, Inc. v. United States, 371 U.S., at 167 is apropos here: *[¶]* "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency] exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such...practice... .Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' New York v. United States, 342 U.S. 882, 884 (dissenting opinion)[46]" (footnote omitted). *[¶]* We have frequently reiterated that an

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[42] *See cumulatively,* Finding 32 at SAR 300-1; Finding 3-C at SAR 309-10; and Finding 1 at SAR 331-32 (of 8/14/98 report on CSAC [SAR 326-37], disclosed by EDUC 9/10/01 [SAR 281])

[43] "...Bank of America, Education's contractor for government purchase cards.. ." GAO-01-585T, p. 12, 4/3/01

[44] *See* SAR 170: according to EDUC's "(LI09) Debt Level Information Screen" dated 1/23/01, neither "Originating lender: 801178 B of A trustee c/o cmsc" nor "claiming lender: 801178 B of A Trustee C/o cmsc po Box 92025 Los angeles CA 90009-2025" match the lender of the Note, First Independent Trust #828374 [AR 5]

[45] *See* 34 CFR 682.609 Remedial Actions (for participating schools), *and* 34 CFR 682.413 Remedial Actions (for guaranty agency, lender and [any applicable] third-party servicer)

[46] Continued/ended: ".. .Absolute discretion, like corruption, marks the beginning of the end of liberty. This case is perhaps insignificant in the annals. But the standard set for men of good will is even more useful to the venal." *id.*

agency must cogently explain why it has exercised its discretion in a gIven manner, Atchison, T. & S. F. R. Co. v. Wichita Bd. of Trade, 412 U.S., at 806; FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 249 (1972); NLRB v. Metropolitan Life Ins. Co., 380 U.S. 438, 443 (1965); and we reaffirm this principle again today. Motor Vehicle Mfrs. Assn. v. State Farm Mut., 463 U.S. 29, 48-49 (1983).

-13-

De Novo Review of Requests to Correct (and Chances to Disagree on) the Record

> In any suit brought under the provisions of subsection (g) (1) (A) of this section...the court shall determine the matter de novo. 5 USC 552a(g)(2)(A)
>
> Whenever any agency (A) makes a determination under subsection (d) (3) of this section not to amend an individual's record...or fails to make such review in conformity with that subsection...5 USC 552a(g)(1)(A)
>
> Each agency that maintains a system of records shall...(3) permit the individual who disagrees with the refusal...to amend his record to request a review...and not later than 30 days...make a final determination...[and] permit the individual to file a concise statement setting forth his reasons for disagreement...and notify...of the provisions for judicial review of the...determination...5 USC 552a(d)(3)

Remedy for agency refusal to amend the account records, or to review disagreement therewith, arises in this suit

[*i.e.*, #39, Compl. p. 14]. When EDUC's inadequate records [see Records Maintenance etc., *infra*] introduced "summaries" of letters [i.e., AR 15-19] (*vs.* noting receipt/misinterpreting content—thus, refusing to correct/amend or annotate files and withholding due process [e.g., AR 13-14]), two "interpreted" triggers for APA chance to address errors/disagreement appear: "ACCT HAS BEEN HELD OPEN IN ERR" [AR 16] and "HE ASKS US TO FORWD COPIES OF OUR CORR FOR FILE WHEN RETURNING ACCT TO OUR EMPLYR" [AR 17]. Errors did not end with the source, but continued under EDUC's hand.

> The agency's findings "must...be set aside when the record before a Court of Appeals clearly precludes the [agency's] decision from being justified by a fair estimate of the testimony of witnesses or its informed judgment on matters within its special competence or both." *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474,490 (1951).

EDUC admits that noting a letter's receipt does not preserve detail, comments or requests therein,[47] yet, on 6/25/96-2/18/97, and as of 11/6/00, [AR13-14 & 20] EDUC accepted such "entries" in violation of responsibilities under the APA [5 USC 552a(m)(1)] and the FCCS [4 CPR 102.6(a)]; signaling waiver to contractors of provisions[48] to immediately suspend activity/refer to EDUC in 5 days any disputes to amount owed "for example, that the debt was never incurred..." *and* legal defenses, "...fraud, forgery..." [SAR 364-5]; and leading, by such example, in

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[47] *Defendant's Answer to Plaintiff's Requests for Admissions*, Admission 5 at SAR 248

[48] EDUC supplied [see SAR 349-50] the Statement of Work Private Sector Collection Activity For Student Related Debts updated 6/7/00 [SAR 351-80] for all separately-requested agreements with involved collection contractors by my 7/27/01 Requestsfor Documents #17-22 [SAR 230-1]; the related explanatory pages (limited to portions/on datum specifically identified) for id #24 [SAR 231-2] were produced by EDUC/appear at SAR 381-431.

the deterioration of the intent and effect of, among other related laws, the Debt Collection Improvement Act of 1996 [*see* Compl. p. 13, #36-b].

Given such obvious deficiencies in EDUC's "Collector Note Pad;" disparities in the details/nuances presented by the parties about due process-triggering exchanges; my filing descriptions/copies of inter-party exchanges with the Complaint prior to access to

related agency productions; and good-faith disclosure of the details of my records during prior court-ordered exchanges: for de novo review to fairly ascertain when correction or review of, or appending statement of disagreement to, the account record was called for, my submissions qualify for Residual Exception (FRE 807), having sufficient distinctive characteristics (i.e., in content/circumstances, corresponding opponent documents and records, etc.) for FRE 901 (b)(4) authentication/identification of SAR 23-146, 189-199. Further, because the integrity of the agency records are reasonably in dispute, and the subjects of many of those "summaries" were my own communications, then my notes, records, and original writings related to EDUC's summaries are required under FRE 106.

Correction of EDUC Internal Records—besides the abysmal lack of foundation for pursuing the EDUC claim against me (instead of the source(s) of misuse of the Note), and admitted inadequacy of the first eight months' of recording contact *from* me, false entries in EDUC's internal records must be corrected to reveal due process triggers.

Major disparity arises on the early "history" of contact on the account. I asserted I was not contacted, after withdrawing on the first day of class without receiving a loan check, until I received/answered one demand at my California home from EDUC in 1993, then was not contacted again until 1/96 at my present home, when I promptly replied [Compl. #7 & 10, pp. 2 & 3-4]. EDUC disagreed on when the initial demand I received was sent

[Ans. #7, p. 2], claimed records show "demand letters were sent to Plaintiff's California address in 1993, 1994 and 1995" [id #10, p. 2], that initial *dispute* requested the Note on 6/25/96 [id. #10-b], and that CSAC records "indicate that notices and demands for payment were sent to Plaintiff as early as February 26, 1987" [id. #14-b, p. 3].

That CSAC record is not in the "Administrative Record;" it reveals EDUC's demands were not sent to my California address in 1993, 1994 and 1995. (*See De Novo Review of Agency Adjudicatory Action/Inadequate Fact-finding Procedures,* Contact History Report dated 12/31/92, #D, *supra. Cf.* AR 9-11 at 2/14/95-5/26/93). While a successful forwarding, failure to record response, and post office round-robin for a common name

are plausible coincidences, EDUC regulations require prompt "skiptracing" (*see* SAR 358 and 32 CPR 682 .411(g)). *Cf.* earliest three (and 12 of 18) demands to CSAC's known "bad address" were recorded "U" Returned Undeliverable. [AR 9-11]. EDUC admits to having known my California driver's license number...[SAR 251].

EDUC's Collector Note Pad simulates record maintenance, but, I was more likely to ask for the "verification of debt" offered, than to specify the promissory note, as EDUC's early records reflect.[49] Deliberate exclusion of express due process triggers from EDUC "records" appear between SAR 50 *and* AR 14 at 1/24; SAR 51 *and* AR 14 at 2/18; SAR 75-6 *and* AR 14 at 4/3; SAR 79 *and* AR 15; SAR 84 *and* AR 16 at 11/15; SAR 88 *and* AR 16 at 12/21; SAR 91 *and* AR 17 at 12/28; SAR 96 *and* AR 19 at 1/26 and SAR 99 *and* AR 19 at 2/7: this many occurrences cannot be inadvertent.

A Due Process Anomaly in the Record appears only when reviewing for referrals. Ordinarily, DOJ/GAO referrals "should be made within one year of the agency's

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[49] *Cf.* SAR 23 *and* AR 13 at 6/26; SAR 25 *and* AR 13 at 6/27; SAR 29-30 *and* AR 13 at 7/3, SAR 32-33 *and* AR 13 at 8/27, SAR 34 *and* AR 13 at 8/28

final determination of the fact and the amount of the debt," under 4 CPR 105.1(a), which is consistent with EDUC Debt Collection 34 CFR 30.1(a), guaranty agency requirements 34 CFR 682.410(b)(7)(v), and collection contractor Statement of Work, Recall of Accounts ¶4.1-A [SAR 365]. Referral was inconsistent with the record of the EDUC claim due to the absence of evidence expected under 4 CFR 105.3. The first three collection contractors for the EDUC claim adopted EDUC's practice, and held the account for 28 months, 24 months, 14 months before returning it without activity [SAR 182].

Record of Privacy Act violation—by contractor disclosure, outside its own activity, of alleged prior review information, in violation of 5 USC 552a(b)(7) portion/ activity limitations, and with EDUC contract monitor knowledge (*see* Compl. #34-5, pp. 11-12, and Compl. Ex. L [SAR 108])—includes an inexplicable (versus a more normal business choice, to *correct* the act of omission), undated addendum, "BROWN PER PREV NOTES. .DID NOT FRWRD CPY TO MARY PATTERSON. NBROWN" [AR 20 at 4/7/00]. EDUC professes it "lacks sufficient information to admit or deny. ..regarding his Complaint to the Colorado

Collection Agency Board and therefore denies" [Ans. p. 8], but that contract monitor appears on the record from 1/27/00 through 6/20/00 [AR 19-20, Source Code ED4246]. The other violation (re: AR 9) is the topic of Response to Interrogatory No.2 [SAR 202].

Federal Assistance Program Fraud; Mail Fraud; etc.

> "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf' *United States v. Bostwick,* 94 U.S. 53,66 (1877); *Cooke v. United States,* 91 U.S. 389,398 (1875) (expl. when United States "comes down from its position of sovereignty, and enters the domain of

commerce, it submits itself to the same laws that govern individuals there.")

Since 1993, EDUC has elected engage[sic] me on the terms of a contractual relationship, waiving immunity by the act of claiming that relationship; it should be subject to the liabilities/penalties of its fraud as the non-immunized entity that presented the demands. EDUC's actions in this matter have been in classic expression of Program Fraud under 34 CFR 33.3: it made claims EDUC knew or had reason to know were false or fraudulent, that included or were supported by statements that omitted material facts, were false and fraudulent, in which EDUC had a duty to include the material facts; each claim or other individual request or demand for money constituted a separate claim when it was actually made to me, and each should be subject to a civil penalty and twice the amount actually collected as damages.—only EDUC was acting under color of authority. Presenting demands through the Postal Service for payment of a "loan" without response equal to that required of the original lender to my valid defense of the obligation, fell within the meaning of mail fraud, under 18 USC 1341; EDUC incurred liability each time it engaged in such activity. On the basis of a non-immunized contractual relationship with me, EDUC certified the EDUC claim for Treasury offset in violation of 18 USC 1001.

Conclusion, statement about relief, and signature

I believe there are innumerable more details and issues that comprehensive review of these matters would reveal, but we (my wife and I) have exhausted ourselves and the allotted pages for presenting this much of these considerations in "brief' for this case.

-17-

I seek the same relief identified in the Complaint [*see* Compl. #4, p. 1, and #29, p. 10 (seeking some remedy to the loophole through which EDUC held me in Catch-22 for so long, so it does not happen to others), and 39-42, pp. 14-15, to the extent of this Court's authority], and am

unable to expand on that at this time—except to ask that if certain claims must be dismissed it be without prejudice so options are not unfairly closed to me—ddue to the continual burdens of meeting preliminary-matter deadlines in this case to and including this filing. I do believe an adequate, detailed enumeration could best be briefed after this District Court's determinations on the main issues, to narrow the field of appropriate concentration for me, and give me a point of reference for research.

"Grievous loss" being subjective, from our (I include my family as we are all impacted) perspective, we measure treasure not in our tangible assets or cash (no doubt because of the ease of its counting), but in minutes of quality time with loved ones that EDUC can't' replace, having stolen unbelievably much of it by petty accusations and disproportionate requirements to answer them. A good name, no matter how few are impressed by it, is valuable to its owner/family. The loss and threats here were large to us: years have been wasted, insult sustained, and respect for our government diminished. The APA, Privacy Act, Civil Rights Act, EDUC's own regulations, *et. al,* separately and combined, provide only theoretical individual protection: adherence to reason and rule, and independent verification of "contract" details-such as EDUC's 1993 stake in my obsolete 6/17/85 signature—*before* action (in 2000!). This was a dirty fight; a fair one was not to be had.

Headings and table listings (i.e., contents) herein are descriptive, and not meant to limit. This Opening Brief incorporates my Complaint filed 1/8/01 and the Footnotes below (I believe they are correctly counted as part of the 20-page limit by Order dated 4/22/02); and relies, without indicating adoption or rejection of the contents, on the body of the administrative record/supplements also submitted under that Order. This is not meant to waive my prior submissions/filings in pursuit of my cause in this matter.

Noting persons had to work in concert to protract for 9 years a most simple defense (what loan)?, and that US attorneys and magistrate judges are required to institute prosecutions agains persons decribed in 18 USC 241, at government expense, under 42 USC 1987; this Opening Brief is respectfully submitted this 31st day of July, 2002.

s/Bruce Edwards

Plaintiff pro se
1001 Emporia Street
Aurora, CO 80010-3825
(303)341-9433 (non published, home)

Footnotes * * *[set forth in text above]

#109 Response (cf. #41 Brief) 8/30/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Filed U.S. District Court District of Colorado BB
2002 AUG 30 AM 10:22 James R. Manspeaker Clerk by C Dep. Clk

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF EDUCATION
Defendant

DEFENDANT'S RESPONSE BRIEF

Defendant United States Department of Education, by and through United States Attorney John W. Suthers and Assistant United States Attorney Peter Krumholz, hereby files this Response Brief. For the following reasons, Defendant respectfully submits that its administrative decision should be affirmed and Plaintiff's complaint should be dismissed.

INTRODUCTION

Plaintiff seeks to have this Court review a final agency decision under the Administrative Procedure Act, 5 U.S.C. § 704 with regard to the validity of his student loan debt. Complaint, ¶ 2. As discussed below, Defendant's administrative decision upholding the validity of the debt was not arbitrary or capricious, an abuse of discretion, or otherwise contrary to law. Accordingly, judgment should enter for Defendant and this action should be dismissed.

STATUTORY AND REGULATORY BACKGROUND

A. Overview of the Federal Family Education Loan Program

Under the Federal Family Education Loan Program ("FFELP"), a private lender provides the student with the money and a State or non-profit guaranty agency guarantees the loans. The Department of Education

serves as the reinsurer of the loans pursuant to a reinsurance agreement with the guaranty agency. If a borrower of a FFELP loan defaults, files a bankruptcy petition, dies or becomes disabled, the guaranty agency reimburses the holder of the loan, takes assignment of the loan and promptly claims reimbursement from the Department of Education under its reinsurance agreement. 34 C.F .R. § 682.406. Even after the Department of Education pays the reinsurance claim, the guaranty agency is under an obligation to use due diligence to collect on the loan. If the guaranty agency is unsuccessful in collecting the loan, it may assign the loan to the Department of Education, which then takes title of the loan and engages in its own collection efforts.

Under the Higher Education Act and the applicable regulations, the Department of Education provides Title IV borrowers with relief from their FFELP loan obligations for death, total and permanent disability, false certification, closed school, and unpaid refunds. In general, requests for any type of administrative discharge relief are made to the current holder of the loan. Borrowers who received FFELP loans on or after January 1, 1986 may obtain a total or partial discharge of their loan obligation if the school they attended failed to make a refund that would have been applied to reduce their loan balance. 34 C.F .R. § 682.402. Borrowers who have FFELP loans that were disbursed prior to January 1, 1986 are, according to the Department of Education's policy, eligible for the same unpaid refund relief as those borrowers whose FFELP loans were disbursed after January 1, 1986.

FACTS

1. On June 17, 1985, Plaintiff signed a Promissory Note, for a Stafford loan in the amount of $2,500.00 at 8% interest. Administrative Record ("AR") at 3. First Independent Bank was the lender and the California

Student Aid Commission (CSAC) guaranteed the loan. *Id.*

2. Plaintiff defaulted on his loan on April 15, 1987. *See, e.g.,* AR at 5 ("DFTDTE: 4/15/87"). In a series of letters and phone calls dating back to at least 1993, Defendant has unsuccessfully attempted to secure payment on the loan from Plaintiff. *See* AR at 6-22 (detailing history of correspondence and telephone contact with Plaintiff).

3. Plaintiff finally sent a letter to Defendant contending that his student loan debt was too old to be enforceable. *See* AR at 20.

4.In an August 31, 2000 letter, the Department of Education responded to another letter from Plaintiff, explaining that there is no longer a statute of limitations on collection of student loans and that it would continue to refer his debt for collection until his debt was paid in full. AR at 1-2. In addition, the letter explained that "[a]ny account with the U.S. Department of Education... that has a balance and is not in repayment is eligible for referral to the U.S. Department of the Treasury's Financial Management Service for offset." *Id.* at 1.

5.As of May 9, 2002, Plaintiffs balance is $5,316.82.

ARGUMENT

I. DEFENDANT'S REJECTION OF PLAINTIFF'S ADMINISTRATIVE CLAIM WAS NEITHER ARBITRARY, CAPRICIOUS NOR AN ABUSE OF DISCRETION

The Department of Education's actions here are judged under the standards established in the Administrative Procedure Act, 5 U.S.C. § 706. This requires Plaintiff to demonstrate that the Department of Education's actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...." 5 U.S.C. § 706(2)(A). While the court's inquiry here must no doubt be "searching and careful," it is well settled that

such inquiry is ultimately narrow and limited to "whether the [Secretary's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971); *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991). Indeed, the court "is not empowered to substitute its judgment for that of the agency." *Overton Park*, 401 U.S. at 416. The agency's decision must be affirmed if it is rationally based. *Bowman Transp., Inc. v. Arkansas Best Freight Sys.*, 419 U.S. 281, 285 (1974). In this case, Plaintiff seeks review of the Department of Education's August 31, 2000 letter rejecting his claim that his loan is unenforceable due to the statute of limitations and that his loan is ineligible for collection through the Treasury Offset Program ("TOP"). Prior to the issuance of that letter, the Department had issued a series of sound administrative decisions with regard to Plaintiff's various arguments protesting his obligation on this student loan. The final decision, which is at issue in this lawsuit, was Ms. Spadoni's letter dated August 31, 2000. AR at 1-2. This and each prior decision was made in accordance with the law regarding the statute of limitations for collection of student loans and TOP, and in light of the factual circumstances of Plaintiff's situation and his arguments why he did not owe the loan. It was not arbitrary or capricious and should be upheld.

The initial dispute preceding the August 31, 2000 decision began in 1997 when Plaintiff raised his first objection to certification of his account in TOP. According to the Treasury and Department of Education regulations, on September 5, 1997 , the Department of Education sent Plaintiff a notice to his last known address informing him that his student loan debt would be certified for TOP and that his federal benefits would be

offset.[50] Declaration of Nicholas Navarro ("Navarro Decl."), 24 (attached as Exh. 1 to Defendant's Memorandum Brief in Support of Motion for Summary Judgment filed Oct. 1,2001).[51] The notice stated: (1) the nature and amount of his debt, (2) Education's intent to offset, and (3) offered Plaintiff the opportunity to (i) inspect and copy relevant records; (ii) obtain a review within Education of the existence or amount of the debt; and (iii) enter into a written agreement to repay the debt. *See* 34 C.F.R. § 30.22(b)(3). In response, Plaintiff submitted a request for review objecting to the decision to certify his account for TOP because TTCI signed his loan documents and falsely certified his ability to benefit. Compl. 22; *see* 34 C.F.R. §682.402(e). Ms. Shirley, a Department of Education employee, responded to his Request for Review in a decision dated October 30, 1997. Navarro Decl. ¶ 24. In this letter, Ms. Shirley stated that the Department of Education noted his objection to the offset with regard to the false certification for ability to benefit, but that pursuant to regulations, he could only qualify for this administrative discharge if he obtained his loan after January 1, 1986 and he submitted a sworn statement. Ms. Shirley also noted Plaintiffs objection to the loan based on a claim of unauthorized signature, but that he was required to submit a sworn statement for this claim also. *See* 34 C.F .R. § 682.402(e). Ms. Shirley

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[50] The Department of Education had been sending N18 notices to Plaintiff annually since 1993; however, it was not until 1996 that the notice was successfully delivered to him. Navarro Decl. ¶ 24.

[51] Although judicial review is generally confined to the record made before the agency and may not include matters outside that record, the court may make exceptions where it is necessary for the court to have an explanation of complex matters of a highly technical nature. Franklin Sav. Ass'n. v. Director, Office of Thrift Superv., 934 F.2d 1127, 1137-1138 (10th CiR. 1991). Here, where the administrative record consists almost entirely indecipherable computer screen printouts, the declaration of Mr. Navarro has been supplemented to help explain the record.

provided Plaintiff with the applications for both the ATB and unauthorized signature administrative discharges. Ms. Shirley's decisions in her letter were in accordance with Education's regulations and Plaintiffs specific objections to his loan obligation and certification of his account in TOP.

On April 3, 1998, Ms. Shirley received a letter from Plaintiff in which he stated that he did not qualify for either the ATB or unauthorized signature administrative discharges because he did not have anything to do with TTCI after the first class. Navarro Decl. ¶ 27; Compl., Exhibit H. He did not return either of the Discharge applications with his April 3 letter. On September 2, 1998, the private collection agency to which Education had referred Plaintiff's account received a letter from Plaintiff. Navarro Decl. 28. In this letter, Plaintiff stated that he did not dispute that he requested the loan but argued that he did not attend TTCI after the first class, that he was never contacted by the school after he submitted a withdrawal slip, that he never received any documents regarding the loan until 1993 and then not again until 1996, and that he has not received a response to his hearing request. *Id.* On November 12, 1998 Education sent Plaintiff a letter, signed by Ms. Spadoni, responding to his letter to the collection agency. *Id.*, ¶ 29; Compl., Exhibit J. The letter pointed out that it is Plaintiff s responsibility to maintain contact with the holder of his loan and that the promissory note is a binding, legal document enforceable against him.[52] The letter stated to him that school loans are, by law,

[52] The Department of Education conducted skip traces to attempt to find Plaintiff's address and telephone number, including obtaining address information from Plaintiff's tax returns through IRS. *See* Navarro Decl., Exhibit E. Despite obtaining address from IRS and skip traces, notices sent to Plaintiff were still returned as undeliverable.

disbursed by checks or electronic funds transfers, which must be sent to the school attended by the borrower, and typically applied to the student's tuition and expense, and that the student may never directly receive any loan money. The letter also stated that if Plaintiff has evidence that he is due a refund from the school, he could submit such evidence to the Department of Education for investigation. Navarro Decl. ¶ 29. This decision was in accordance with Plaintiff's promissory note, the Higher Education Act and regulations governing unpaid refunds, and common law principles governing loan contracts.

On August 31, 2000, the Department of Education sent another letter to Plaintiff, signed by Ms. Spadoni, responding to correspondence from Plaintiff wherein he argued that his loan was too old to be collected and that his account should not be certified for TOP. *See* AR at 1. The letter noted that the Department of Education was permitted to collect his loan despite its age because the applicable amendments to the Higher Education Act of 1965 eliminated the statute of limitations on collection of student loans. *Id.* The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub. L. No. 99-272 §16033, 100 Stat. 355 (1986) as enacted, had placed a Federal six year statute of limitations period, commencing upon assignment to the Department of Education, for suits to collect student loans held by the Department. However, the Higher Education Technical Amendments of 1991 (HETA), Pub. L. No. 102-26 §3(c), 105 Stat. 123 (1991), amended COBRA to remove the six year statute of limitations and made that change effective retroactively for any actions pending at the time COBRA was passed. The amendment states that no Federal or state law "shall terminate the period within which...a judgment may be enforced..." on a Title IV student loan by the Department, the U.S. Attorney General, the guarantor, or the school (for Perkins loans). HETA § 484A (codified as amended at

20 U.S.C. §1091a). Prior to July 1992, HETA contained a "sunset date" which limited the new law's effect to those action taken prior to November 15, 1992. HETA § 3(c). However, HETA has been amended to eliminate the sunset date. Pub. L. No. 102-325, §1551, 106. Stat. 838 (1992) (codified as amended 20 U.S.C. §1091a); *see also United States v. Phillips*, 20 F.3d 1005, 1007 (9th Cir. 1994) (finding that HETA eliminated all statutes of limitations on actions to recover on defaulted student loans and revived borrower's loans which were assigned to the Department of Education in 1976 and 1984).

In response to Plaintiff s objection to certification of his account in TOP, the Department of Education's letter pointed out that he had been given notice on September 5, 1997 of the Department's intention to certify his account for TOP and that if he did not respond to the notice, his account would be referred for offset on December 30, 1997. AR at 1. Since Plaintiff did not raise this objection until nearly three years after the September 5, 1997 notification, it was untimely. Therefore, the Department of Education correctly found that Plaintiff had been given notice prior to the offset required by 31 U.S.C. §§ 3716 and 3720A, and that because Plaintiff failed to respond in a timely manner, it had properly referred his debt to Treasury for collection by TOP, and the resulting offset of his federal benefits was valid. Thus, the Department's decision that Plaintiffs loan was outstanding and enforceable and that Education had provided him proper notice prior to offsetting his federal benefits in TOP was reasonably based on the factual circumstances of Plaintiff's loan history and applicable legal principles and statutes. The Department of Education's decision was not arbitrary or capricious nor was it an abuse of discretion and it should be upheld under this review.

CONCLUSION

Accordingly, for the reasons set forth herein, Defendant respectfully requests this Court to uphold its final administrative decision with regard to Plaintiff's student loan.

DATED this 30th day of August, 2002.

Respectfully Submitted,

JOHN W. SUTHERS
United States Attorney
s/Peter Krumholz
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

#110 Reply Brief 9/17/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court Denver Colorado
SEP 17 2002 James R. Manspeaker Clerk[1]}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff *pro se*

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

Plaintiff's Reply to Defendant's Reponse Brief

A regurgitated *Defendant's Memorandum Brief in Support of Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)* filed 10/1/01 ignores my 7/31/02 *Opening Brief* and 1/8/01 *Complaint*. "Here, where the administrative record [filed 5/15/02] consists of almost entirely indecipherable computer screen printouts, the declaration of Mr. Navarro has been supplemented to help explain the record," (*Def.'s Response Brief* [8/30/02, p. 5, n. 2).

> "De novo review of whether the [agency's] decision was 'unwarranted by the facts' is authorized by 706(2)(F)...when the action is adjudicatory in nature and...agency fact-finding procedures are inadequate." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971)
>
> "[A Court] failed to engage in a substantive review of the record to determine if the agency considered relevant factors or articulated a reasoned basis for its conclusions. Instead it relied on the *post hoc* rationalizations of counsel or attempted

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itself to supply a reasoned basis for agency action without regard to the contents of the administrative record. Any one of these errors would warrant reversal; their cumulative effect mandates it." *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994)

Fig. 1: The Rasca Declaration *supplement* might say, "On October 3, 1985, 'Peter Krumhol' signed for Pell Grant checks...Ana Morton verified units and progress on the receipt," *if TTCI* "recorded"...

Travel and Trade Career Institute[2]
Student Assistance Account United California Bank
Federal Funds Bixby Knolls Office
3635 Atlantic Ave. 4210 Long Beach Blvd.
Long Beach, CA 90807 Long Beach. Ca 90807
16-21/132 1220 CHECK No **4136**[3]
DATE SEPT 24, 1985 AMOUNT $656.00
PAY 656 DOLLARS AND 0 CENTS TO THE ORDER OF
PETER KRUMHOL 505-05-0505
1255 17TH ST 700 DENVER, CO 80202
MUST HAVE COMPLETED 18[4] UNITS FOR THIS
CHECK. TH1S CHECK IS FOR STUDENT PELL: 656
NOT-NEGOTIABLE s/~~*Rodger Erickson*~~
"004136":122000218:13293208 2"11 Authorized Signature

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[2] *See* 11/20/00 Response to dispositive motion at Encl. 9:
Borrowed at Name: TRAVEL & TRADE CAREER INSTITUTE
"Supplements" are from THE LOAN/GRANT REQUEST ORIGINATOR in control of all related financial and 'student records' for the UNCANCELLED check "receipts."

[3] *See* 10/1/01 dispositive motion, at "Exhibit 2" attachment C

[4] Conflicting: "verification by Ana Morton."

PET ... 505-05-0505
09/24/85 CHECK # 4086[5]

RECEIVABLES	TUITION & FEES	3755.00
	PRIOR PAYMENTS	2459.58
	BALANCE OWED	1295.42
	THIS CHECK	975.00
	NEW BALANCE	320.42

[6]

FINANCIAL AID ADVANCES

	NDSL	SEOG	CWS
PRIOR CHECKS	0.00	0.00	0.00
THIS CHECK	0.00	0.00	0.00
NEW TOTAL	0.00	0.00	0.00

CHECK No 4137

PELL	TOTAL
1631.00	1631.00
319.00	319.00
1950.00	1950.00[7]

PRIOR PAID TO SCHOOL: 2339.58[8]
PAID TO STUDENT: 0
THIS CHECK IS FOR $656.00 FOR STUDENT
RECEIPTED BY x[apparently s/]*Peter Krumhol*
DATE *10/3/85*[9] STUDENT'S SIGNATURE
UNITS COMPLETED 0.00[10] AS OF 0/0
UNITS VERIFIED BY *AM*
ADDRESS VERIFIED BY *AM*
SATISFACTORY PROGRESS VERIFED BY *AM*

Even in 1985, a signature could be traced over carbon/carbonless paper to "produce" a "copy" simulating an "original" record:
[apparently] s/*Peter Krumholz*

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[5] *See* 10/1/01 dispositive motion, at "Exhibit 2" attachment B
[6] *See* 10/1/01 dispositive motion, at "Exhibit 2" attachment D
[7] Exceeds 1984/85 $1,900 max.: P.L. 98-139, Title III §300 10/31/83 97 Stat 891
[8] Exceeds 1st time borrower single installment $1500 maximum limit: 1984 ed. 34 CFR §682.401(b)(3)
Cf. AR at 3: "Amount Financed $2341.67"
[9] *Cf.* Ex. 2 p. 3: "ANC stands for "Absent No Call" *and* Ex. 2's garbled "Exhibit F": 10/02/85 0.00 ANC
10/03/85 0.00 ANC
(RE: "Ex. 2-C" & Ex. 2-D")
[10] Conflicting: "verification by Ana Morton."

Cf. **11/20/01 Response to dispositive motion at pp. 17 and 4, respectively, sets forth "prior records" certified Discovery:**

Admission 2: With regard to EDUC claim against Plaintiff, Defendant does not have, and has not provided Plaintiff, a copy of the original receipt from the school at the time of the alleged 6/21/85 loan advance into the school's account purportedly on Plaintiff's behalf. Answer: Object to admission as unclear and ambiguous as to definition of "original receipt from the school." Subject to and without waiving this objection, admit that Defendant has not provided Plaintiff with a receipt of loan from school because no such receipt exists.

Admission 7: Prior to Plaintiff's original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCH), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him. Answer: Admit that, prior to this suit, Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant).

"The declaration of Mr. Navarro has been supplemented," like its brief, by entra-record, post-suit additions of a *partial* page, "Exhibit A (Appliation)" (*Navarro Decl.* p. 7), *allusion* to California Student Aid Commission (CSAC) "history" (*Id.* and *Ans.* p. 3), and *1985* "records" of *an alleged grant* by originator, Travel and Trade Career Institute (TTCI) (EDUC brief filed 10/1/01, p. 5).

Fig. 2: 11/20/01 Response in Opposition to Motion to Dismiss (named per 10/26/01 Order) sets forth discovery about incomplete "exhibits"...

at p. 2...	**Admission 20** * * *[11]	Answer * * *[12]
at p. 4...	**Admission 1** * * *	Answer * * *
	Admission 6 * * *	Answer * * *[13]
at p. 5...	**Admission 26** * * *	Answer * * * [14]
at p. 10...	**Admission 22** * * *	Answer * * *
at p. 11...	**Interrogatory No. 25** * * *	Reponse * * *
	Interrogatory No. 26 * * *	Reponse * * *
atp. 13...	**Interrogatory No. 50** * * *	Reponse * * *

at p. 17-18...*(Note:* dispositive "Exhibits 2/B-2/D = US000004-6)

Admission 18 * * * Answer * * * [15]

Admission 14 * * * Answer * * * [16]

at p. 19... **Request No. 8** * * * Response * * *

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[11] *See* 5 USC 552a(p)(1) *independent verification* required *for offset*

[12] *See* 34 CFR 30.24 (e) has no such negation; review is to include "other relevant evidence..."

[13] *See* AR at 14-20 clear identification: lender performance is in dispute, *not pre-loan signing of the note...*

[14] *Cf.* FRE 801(d)(2), 803(10), required retention at 34 CFR 682.414(a091) & Declaration of Nicolas Navarro at p. 3: ***"loan records include...application...guaranty claim, correspondence, payment records, and other records that evidence transactions between the borrower and the holders...and the original lender..."***

[15] Whereas the "copy of 'Peter Krumhol's' TTCI Pell grant receipt" (*see* Fig. 1), a 21st Century acquisition also, would be easier to generate at TTCI *either in 1985 or 2001:* given their places *outside* agency records/EDUC pre-suit decisions, *normal* 3-yr school retention under 34 CFR 682.610(a)(2), & limited "cover" (: their irrelevance is well established (*cf.* Fig. 3).

[16] *see:* Fed. Rules of Evidence Rule ("FRE") 1004 (1) on bad-faith destruction by proponent; *but notably* FRE 803 at (8) & (10): absence from regular recors *is* proof of non-occurrence

Based on "FACTS" in a 1985 First Independent Trust promissory note and EDUC-system date, entered as of 5/25/93, (*see Defendant's Response Brief,* p. 3, *and* AR5), final decision of validity regarding the EDUC claim for a CSAC/Bank of America loan and default was clearly erroneous.

Fig. 3: No Agency Document/Record Shows Transfer of the Note EDUC "Holds" *to* Bank of America

AR at 5[17] **+ * * * EDUC #US000071**[18] **≠ AR at 3**[19]

*** * * Withdrawal Dates of EDUC Record:**
AR at 5: WITHDRAWAL: 12/13/85
Rasca Decl. at Ex. F p. 4: 11/11/85
Rasca Decl./Ex. F p. 3/5: "Attendance Calculations" show last week more-than-half-time hours "recorded": 9/20/85
* * *

Between 1/8/01 Complaint and 3/19/01 Answer, counsel obtained extra-decision and non-agency "exhibits" from outside the record before the agency to "supplement" explaining the loan claim.

Fig. 4: Represented here, dispositive motion response (11/20/01) Enclosures 17 and 2, respectively, confirm Navarro Decl. Ex. A & Rasca Decl. Ex. 2/A—2/F *post hoc* to EDUC "decision" (*see also* Fig. 2)
* * *

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[17] ***(Claim)*** LDNER: 801178
[18] 01/23/01 Debt Level Information Screen* * *
"Originating Lender 801178 B OF A TRUSTEE C/O CMSC * * *
[19] ***(Note)*** O.E. Lender Code Number 828374 * * * FIRST INDEPENDENT TRUST

"[T]he declaration of Mr. Navarro has been supplemented to help explain the record," by *indirect loan transaction inferences* in an incomplete/self-conflicting "1[illegible] student record' for a newly-alleged, "Pell grant" of [illegible] agency record, produced by a recent employee ("oversaw" $85,000 of *Pell grant misapprpriations*) of a loan/grant originator (of millions in Federal funds annually).

Fig. 5: Applications *Predating* Pre-loan Note/ *Alleged* Disbursal Show Untrustworthiness of Source

* * * California Guaranteed Student Loan* * * FOR LENDER USE - LOAN IDENTIFICATION: _____ * * *

16. Do you have any outstanding student loan debts? No[20]

29. (A) FINANCIAL AID FOR LOAN PERIOD: -0- [21]

* * * *See* **Ex. 2-C,** alleged "Pell grant receipt for student" * * * $656.00 * * * receipted by *xBruce Edwads*[22]

Cf. The Student Room/Board 1984-85 Pell Grant MINIMUM: $1,000 by amended Revisions/Student Financial Assistance Technical Amendment Act of 1982 §4(a): Pub. L. 98-79 8/15/83 97 Stat 479

* * *

Filings *with* " the declaration of Mr. Navarro," allegedly "necessary" where "complex matters of a highly technical nature" need "help explain the record" (*Response* at p. 5, n

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[20] * * * 1st-time boarrowers (*see* [1982] 20 USC 1075(a)(1)(B), 1078(b)(1)(A)(ii) *and* [1984] 34 CFR 682.401(b)(3)(ii))—**prohibited wihout prior commercial-lender denial** * * *

[21] *cF.* 34 cfr 682.603 & 682.200 (1984 ed.), about school certification of loan application & "estimated financial assistance," respectively: * * * TTCI *falsified intent* & "Pell grant receipts

[22] ***Baselines shift between the tracings of names!***

2) of CSAC/Bank of America's 1987 loan/default *claim* for a 1985 First Independent Trust *note,* are inconsistent.

Fig. 6a: Rasca Decl/Exhibits compared to relevant assertions * * *
Fig. 6b: * * *

"The declaration of Mr. Navarro" is no more substantiated or reliable than the Rasca Declaration (*see also* Fig.'s 2, 3 & 5); judicial review of internal conflicts/absence of required documentation or any *independent* verification (EDUC "records" started on 5/23/93) will expose his pretences

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Fig. 7 Answer #14b at 3, and Navarro at 7, rely on FRCP 26(a)(1)(B)(B Ex. 1 CSAC "Contact History" (US000014)—that EDUC did not file in this case; its entries/contradictions are shown below: * * *

EDUC failed to identify a final written agency decision on the existence of the alleged debt IN RESPONSE TO MY FORMAL FILING FOR REVIEW OF THE CLAIM *required,* even if just on the submissions, written record, and other relevant evidence, under 34 CFR 30.33/30.24(e).

Fig. 8: Relevant Record on Formal Request for Review of the Claim/Existence of Debt

AR at 14 SAR at 270

*** * ***

Thus, the existence of alleged debt for the CSAC/Bank of America 1987 claim against a First Independent Trust 1985 not has/had no record to justify the agency decision,

due process was withheld by substituting offered review with requirement to admit to debt/request discharge of an existing loan instead, and the many violations of statute, code, law and authority raised in the Complaint are verifiable in the legitimate Administrative Record and Supplements thereto—which do not support defense counsel's assertions.

Incorporation both the 1/8/01 Complaint and the 7/31/02 Opening Brief, and without waiving any of the filings I have submitted during these proceedings, I request my right to the searching and careful reviwe under the most rigorous standard applicable, and all remedies available under the law, to be applied to my claims without regard to Defense post-suit extra record materials and rationalizations.

With appreciation to my wife for her resesarch and production through every step of this case, while I was engage in the business of supporting my family, respectfully submitted this 16th day of September, 2002.

s/Bruce Edwards

Bruce Edwards, Plaintiff *pro se*
1001 Emporia Street
Aurora, Colorado 80010
(303) 341-9433 (non-published, home)

Treasury Offset Program (TOP) information

Overview

(*From* http://fms.treas.gov/debt/top.html)

The Treasury Offset Program is a centralized offset program, administered by the Financial Management Service's (FMS) Debt Management Services (DMS), to collect delinquent debts owed to Federal agencies and states (including past-due child support), in accordance with 26 U.S.C. § 6402(d) (collection of debts owed to Federal agencies), 31 U.S.C. § 3720A (reduction of tax refund by amount of the debts), and other applicable laws. FMS disburses Federal payments, such as Federal tax refunds, for agencies making Federal payments (known as "payment agencies"), such as the Internal Revenue Service. "Creditor agencies," such as the Department of Education, submit delinquent debts to FMS for collection and inclusion in TOP and certify that such debts qualify for collection by offset.

Payment agencies prepare and certify payment vouchers to FMS and disbursing officials at other Federal agencies that are non-Treasury disbursed (such as the Department of Defense), who then disburse payments. The payment vouchers contain information about the payment including the name and Tax Identification Number (TIN) of the recipient. Before an eligible Federal payment is disbursed to a payee, disbursing officials compare the payment information with debtor information, which has been supplied by the creditor agency, in FMS' delinquent debtor database. If the payee's name and TIN match the name and TIN of a debtor, the disbursing official offsets the payment, in whole or in part, to satisfy the debt, to the extent legally allowed. The disbursing official is required to perform such offset pursuant to 31 U.S.C. § 3716(c).

FMS transmits amounts collected through offset to the appropriate creditor agencies. FMS maintains information about the delinquent debt in the TOP delinquent

debtor database and continues to offset eligible Federal payments until the creditor agency suspends or terminates debt collection or offset activity for the debt. A creditor agency will suspend collection if the debt is subject to a bankruptcy stay or if other reasons justify suspension. A creditor agency will terminate collection of a debt if it is paid in full, compromised, discharged, or if other reasons justify termination.

TOP Law (pertinent components)

(*From* http://fms.treas.gov/debt/regulations.html)

- Public Law 104-134
  Debt Collection Improvement Act of 1996
- Executive Order 13019 Supporting Families: Collecting Delinquent Child Support Obligations
- 5 U.S.C. 552a - Records maintained on individuals (Privacy Act)
- 26 U.S.C. 6103 - Confidentiality and disclosure of returns and return information; 6402 - Authority to make credits or refunds (tax refund offset)
- 31 U.S.C. 3701 - Definitions; 3711 - Collection and compromise; 3716 - Administrative offset; 3717 - Interest and penalty on claims; 3718 - Contracts for collection services; 3720A - Reduction of tax refund by amount of debt; 3720B - Barring delinquent federal debtors from obtaining federal loans or loan insurance guarantees; 3720D - Garnishment; 3720E - Dissemination of information regarding identity of delinquent debtors;
- 31 U.S.C. 7701 - Taxpayer identifying number
- 31 C.F.R. Part 285 *Subpart A - Disbursing Official Offset:* 285.2 - Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Non-Tax Debt; 285.5 - Centralized Offset of Federal Payments to Collect Non-Tax Debts Owed to the United States *Subpart B - Authorities Other than Offset:* 285.11 - Administrative Wage Garnishment; 285.12 - Transfer of Debts to Treasury for Collection; 285.13 - Barring

Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees

- 31 C.F.R. 900-904 - Federal Claims Collection Standards
- OMB Circular No. A-129 - Issuance of Transmittal Memorandum Amending OMB Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables" [65 FR 71212-71225]